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Wills, Estates, and Trusts

A Manual of Law, Accounting, and Procedure; for Executors, Administrators, and Trustees

By

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By Thomas Conyngton

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VOLUME II

PART IV

THE LAW OF TRUSTS

CHAPTER XL

THE NATURE OF TRUSTS

§ 356. Trusts—Definitions

A trust is a legal arrangement by which a person known as the "trustee" holds property for the benefit and advantage of another, known as the "beneficiary" or, in legal phrase, as the *cestui que trust.*

The parties to a trust are: (1) the creator, (2) the trustee, and (3) the beneficiary or *cestui que trust.*

The property or subject matter may be real estate or money, goods, chattels, or choses in action. Anything that can be held legally may be the subject of a trust.

Wherever the legal estate or interest is in one person and the equitable interest is in another, a trust exists. It is called a "trust" because it is founded on trust and confidence in the trustee, that he will carry out the wishes of the creator of the trust as expressed in the will or the deed of trust.

A trust is not a contract and therefore no suit can be brought in a court of law for what is called a "breach of trust," but in a court of equity a trust can be enforced, and hence all litigation concerning trusts is conducted in the courts of equity or chancery.

A beneficiary or *cestui que trust* holds what is termed in law an "equitable title." To explain this requires that some definition be given of the legal and technical distinction between common law and equitable titles.

The vital distinction between trust estates and all other ordinary estates is that in every trust there are two interests. Both these interests are spoken of as estates. That of the

trustee is known as the legal estate and that of the beneficiary as the equitable estate. As the legal owner of the property the trustee may be personally liable for any nuisance created by the property or conducted on the property. At the same time the trustee is not allowed to derive any benefit from the property or from the trust.

On the other hand, it is not intended that the trusteeship should become a personal burden to the trustee. All the expense which the trusteeship involves, such as repairs, insurance, taxes, legal expense, etc., may be paid for out of the trust funds.

§ 357. Common Law Titles

The common law of England, from which most of our own law has been derived, was simple and direct. It did not recognize anything but direct ownership by the man in possession of property. If property were left by will to Arthur Howe, "in trust," to collect the rents and income and to pay them over to the testator's widow, the common law courts would not enforce the trust, and if Arthur Howe failed to pay over the profits to the widow the courts of common law could give no relief. So far as the common law was concerned, such a thing as property held "in trust" did not exist. It recognized that Arthur Howe had the legal title, and that was the only title the common law courts would enforce.

Because the common law would not assist the beneficiary of a trust, and because in many other ways it had no flexibility or adaptability to an advancing civilization, those who could not right their wrongs in the common law courts petitioned the king as the fountain of justice to give them relief. The king referred these various complaints as they arose to his chancellor. The king's chancellor was a church dignitary and was well pleased to administer the principles of the Roman or civil law in which all dignitaries of the church were trained.

§ 358. Courts of Equity

Gradually, many causes which the courts of common law would not hear were in this way brought to the attention of the chancellor and there gradually developed a widely extended system of jurisdiction, called, to distinguish it from the common law, "equity jurisdiction," and the courts in which it was administered were called from the chancellor, "courts of chancery or equity." Having two systems of legal relief in the same country was confusing and uneconomical but it came about in the course of time, and for more than two hundred years the courts in England were divided into two distinct systems, one termed "law" and the other termed "equity." The terms so used add to the layman's confusion because the decisions of the courts of chancery are as much the law of the land as the decisions of the courts of common law, and neither court has any monopoly of the quality of equity.

When a lawyer says that a case is an equitable case, he means that it will have to be tried in a court of equity, and when he talks of a law case he means that suit must be brought in a court of common law and not in a court of chancery.

Equity procedure was at first simple and informal, but human nature loves forms and settled customs, and chancery procedure soon became more formal and complex than even the common law, and a chancery suit became proverbially slow.[1]

Equity was brought to this country and, as in England, was used as a separate system to supplement the defects of the common law.

In some states the attempt has been made to combine law and equity and to have both legal and equitable cases tried before the same courts, but even where this is the case the legal profession has kept up the distinction between the two.

[1] The reader who wishes to go further into this subject may read Story, Equity Jurisdiction, Vol. I, § 56, and notes.

In fact, it is not possible to understand our system of administering justice without a recognition of this difference between what is technically and arbitrarily called "law" and "equity."

§ 359. Equitable Titles

As has been said, the courts of common law refused to give any relief to the person who was to benefit by property placed in trust, if the trustee refused to do his duty. The courts of chancery did give relief, and all litigation concerning trusts and their administration is to this day a most important function of chancery jurisdiction. It is vitally necessary to any study of the law of trusts that at least as much as has here been given in regard to the distinction between "law" and "equity" and the difference between "legal titles" and "equitable titles" should be understood.[2]

§ 360. The Legal Title in the Trustee

An essential element in a trust is that the trustee has the legal title. If it is real estate, every feature of ownership, title on public records, actual possession, liability for taxes, right to sue for trespass, etc., is in the trustee. No one else has power to sell, mortgage, or lease. Every element of legal possession is in the trustee. In event of the death of a sole trustee, his heirs would take the property if it was land, and his executors or administrators if it was personal property. Those who thus take the legal estate would take it charged with the trust. Heirs and executors cannot be compelled to act as trustees against their will, and if they decline, the court having jurisdiction will appoint new trustees to succeed the original trustees. If there are several trustees, the title will pass to the survivors until no one is left.

[2] See earlier chapters. See also Woodruff, Introduction to the Study of Law, pp. 46-52.

§ 361. The Equitable Title in the Beneficiary

As the legal title is in the trustee so is the beneficial interest entirely in the one for whose benefit the trust was created. Unless the instrument by which the trust is created provides otherwise, the beneficiary, if of age, can sell or dispose of his or her equitable estate in the property as freely as can the owner of a legal title. When it is desired to prevent anything of this kind, the deed or will may provide against it. Being an equitable title, any dispute concerning its terms or interference with the rights of the beneficiary will have to be settled in a court of equity instead of in a court of law.

§ 362. Creating a Trust

The purposes for which trusts are created are at this time diverse, and will be considered in detail later. Suffice it for the present to state that perhaps the most common and simplest illustration of the creation of a trust is afforded by the case of a man with wife and children, who makes his will and arranges it so that if he dies his property will be safe and the income be applied to the maintenance of those dependent on him. In such case it would be natural that he should select some capable business man or men, younger than himself, and leave the property to them, in trust, to handle it and care for it, and to pay over the income to his wife for herself and the children. This kind of transfer could be done by will or by deed or conveyance of some kind.

The effect would be to make his friend or friends trustees, and his wife and children would be beneficiaries. The legal estate would go to the trustees, and if it were necessary to prosecute trespassers or there were a suit about the title to any part of the estate, such a suit would be brought in a common law court. But if his friends died or became incompetent, his wife and children, having only an equitable interest, would go to a court of equity for relief. A court of equity would have

power to do whatever was necessary to be done. It could require the trustees to account, and show what they had done in managing the property, what income or profits had been collected, and what part had been paid over. If there had been carelessness or fault, the court could compel restitution. If the trustees were incompetent or dishonest, the court could remove them and appoint more reliable men. In short, a court of equity has power to do whatever should be done to make the trust effectual.

Whenever, by will or deed, the legal interest in real or personal property is placed in one person while the equitable or beneficial interest is in another, a trust has been created.[3]

> It may be stated as a general proposition, that everyone competent to enter into a contract, or to make a will, or to deal with the legal title to property, may make such disposition of it as he pleases; and he may annex such conditions and limitations to the enjoyment of it as he sees fit; and he may vest it in trustees for the purpose of carrying out his intention. All persons, *sui juris*, have the same power to create trusts that they have to make a disposition of their property.[4]

§ 363. The Instrument That Creates a Trust

A trust may be created by will, by deed of trust, by declaration of trust, or if it concerned only personal property, theoretically a trust could be created orally. Practically, no trusts are created orally, but they always come into being by some written instrument.

According as trusts are created by will or by some other written instrument, they are classified as "testamentary trusts" or as "voluntary trusts." In neither case is there any prescribed form of words that is necessary to create a trust. It is usual and always advisable to use the words "in trust" to

[3] Pollack and Maitland, History of the English Law, Vol. II, pp. 226, 227.
[4] Perry on Trusts, § 28.

introduce the purposes of the trust and the disposition of the property and income placed in the custody of the trustee.

A "testamentary trust" is so called because it is created by a last will and testament.

A "voluntary trust" is so called because it is in practically all cases created by a voluntary deed or instrument of transfer executed not under compulsion or to fulfil a contract obligation, but freely to secure some kindly or benevolent purpose.

For examples of the creation of testamentary trusts and voluntary trusts, see Form 7.

§ 364. Express Trusts

Nearly all trusts are express or direct trusts—that is, they are created by wills or other instruments that directly and explicitly describe the property that is to be the subject of the trust, the person or persons who are to be trustees, and the persons who are to be the beneficiaries, and set forth what the trustees are to do with the property and the disposition that is to be made of the income and, finally, of the fund or property itself. If the language of the will or other instrument is not clear and explicit, a trust might be implied or presumed which, to distinguish it from an express trust, would be called an "implied trust."

An express trust in land must of necessity be in writing to conform to the provisions of the Statute of Frauds. In most states in this country it is possible to create an express trust in personal property by parol.[5] This subject is treated more fully in Chapter XLIV.

§ 365. Implied Trusts

In some cases where the language will not create an express trust, the court will imply a trust from the intentions of the creator. It often happens in a will that a testator will leave

[5] Matter of Carpenter, 131 N. Y. 86.

property to a legatee and then add a wish, a hope, a desire, or a request, that the legatee will give or transfer a certain portion to someone else. If it seems to the court that the intention was to impose an obligation on the legatee, it will be held to be an implied trust. If, instead, the intention seems to be merely to suggest a gift, leaving it to the discretion of the legatee, no trust will be implied. (See Chapter XLV, "Implied Trusts.")

A resulting trust arises when property is purchased in the name of a party who did not own the purchase money. If a trustee took funds that he had in trust and bought land in his own name, a court of equity would imply a trust for the benefit of the one for whose benefit the funds were held. This case of property deeded to someone other than the owner of the purchase money occurs not infrequently, and the rights of the true owner are saved by the device of a resulting trust.

Another form of implied trust is where a fraud has been perpetrated and to rectify it the courts declare a constructive trust for the benefit of the person defrauded. If a guardian bought in the property of his ward in fraud of the ward's rights, the courts would imply a trust and decree that he held it as trustee for his ward. This class of trusts arises in many forms and illustrates the wide range of the powers of a court of equity in correcting fraud.

§ 366. Duration of Trusts

A private trust, that is, a trust for a man's family or dependents, that concerns only a few private persons, is limited in its duration. It is not regarded as advantageous or for the public good that property should be tied up and withdrawn from sale for long terms of years or in perpetuity. The usual limit on the duration of a private trust is a life or lives in being and twenty-one years more.

When as in New York express trusts in real estate cannot be made for a term of years, but must be made for the life

or lives of some persons living when the trust is created, the attempt to create a trust for a definite number of years is void and the trust fails.[6] The direction in the statute prohibits any suspension "by any limitation or condition whatever, for a longer period than during two lives in being at the creation of the estate."

A public trust is one for the public good, for education, hospitals, religious institutions, or charity. Such trusts as these are not limited as to duration but may continue indefinitely. This subject is considered at greater length in Chapter LIII.

§ 367. Powers of Trustees

It is not uncommon for land to be left to trustees, in trust, to sell and invest the proceeds in good, income-producing stocks, the income to be paid over, etc. In such case the exercise of the power is imperative, and must be carried into effect. In other cases the trustees are given an optional power, which they can exercise or not at their discretion. For instance, it might be provided that "said trustees may at their discretion sell the securities included in the trust property and buy other securities with the proceeds, and in the purchase of such other securities shall not be limited to securities by statute prescribed for savings banks and trustees."

In New York the statute prescribes that every trust power must be exercised unless its execution is made to depend on the will of the trustee.

§ 368. "Trusts" as Meaning a Trade Monopoly

With many the word "trust" has an opprobrious meaning in consequence of its popular use as a designation for any kind of trade monopoly. The first large aggregations to control industry were formed by uniting under one management

[6] Garvey v. McDevitt, 72 N. Y. 556.

practically all the important corporations engaged in the particular line, in what was literally a trust. A board of trustees was selected, composed of the shrewdest managers in the industry. Then, enough shares of stock to control each of the corporations concerned were made over to this board under a uniform trust agreement, in trust, to vote the same, to receive all profits, and to pool the same and pay over the proportionate share of the profits to each of the persons who had placed his stock in the hands of the trustees. The board of trustees elected their own men as directors of the controlled corporations and dictated their management so as effectually to prevent competition. The arrangement, the disregard of public interest, and the high-handed suppression of competitors, caused much indignation. The courts soon dissolved the trusts and directed the distribution of the stocks held in trust.[7] Those interested in monopolizing industry were forced to seek other forms of combination, which they did, but the name "trust" unfortunately continued to be attached to these new forms though they were not in any sense "trusts," and so a majority of the people in this country attach an unpleasant signification to the word.

Review Questions

1. What is a trust? What are the parties to a trust? What may be held in trust? What is the distinction between the legal and equitable estate? In what courts are suits relating to trusts brought?
2. Did the common law recognize trust estates? How were trust estates established?
3. What resulted from the king's chancellor taking jurisdiction of cases that the common law would not relieve? Is equity procedure simpler than common law procedure? In your state, do the same courts try both law and equity cases?

[7] People v. North River Sugar Ref. Co., 121 N. Y. 582; State v. Standard Oil Co., 49 Oh. St. 137.

4. Under what system are suits relating to trusts bronght? What kind of title has the beneficiary of a trust?
5. What kind of title has a trustee? If the estate is land, in whose name would the deed be recorded? If there are several trustees, what effect would the death of one have?
6. What title has the *cestui que trust*? How can he be prevented from selling his interest?
7. What is a common reason for creating a trust? What is the instrument by which a trust may be created? Who would be likely to be selected as a trustee? When would a court of equity interfere? What could such a court do? Who may make a trust?
8. How are trusts created? What is a testamentary trust? What is a voluntary trust?
9. What is an express trust? What is an implied trust? How are express trusts in land created? Why? Can an express trust in realty be created by parol?
10. When is a trust implied? When is a resulting trust implied? When is a constructive trust implied?
11. Why is the duration of trust estates limited? What is the limit in your state? Can a trust for a specified term of years be made in your state? What is a public trust? Are these limited in duration?
12. What are the usual duties of trustees? When are such duties imperative? When optional?
13. How did the word "trust" come to be applied to a combination to restrict competition?

CHAPTER XLI

WHY TRUSTS ARE FORMED

§ 369. The Objects of Trusts

Most of the trusts created are formed for a specific purpose, and when that purpose is accomplished they terminate. Their duration in most of these cases is limited by the fulfilment of their purpose. These general objects may be enumerated as follows:

1. To furnish an income for the life of the creator or for the life of his wife, or for the life of his widow, or for the life of some other relative or dependent. All such trusts would end with the death of the beneficiary.

2. To provide for minor children, till of age. All such trusts would end with the coming of age of the beneficiaries.

3. To provide an income for life, to children, grandchildren, or other relatives. All such trusts would be for the life of the beneficiaries, and could be extended thereafter until the youngest child of any of the beneficiaries came of age. This gives the general rule that no estate, legal or trust, can be held together for longer than the duration of a life or lives in being and twenty-one years after. This time may be extended in case of a child born after the death of the father, to allow for the period of gestation.

4. To conduct a business. The trust associations of Massachusetts are examples of this kind of trust. They are not limited by the foregoing rule to a life or lives in being and twenty-one years after.

5. To provide a foundation for or an income to be applied to some educational, philanthropic, or religious object.

In all cases where these objects are allowable, the limitation to a life or lives in being does not apply.

6. To prevent sale or transfer out of family line. The law does not favor this object and the rule applies.

7. To accumulate rents, profits, or income. The law does not favor this object and the rule applies.

§ 370. Trusts to Hold Property in Family

Men have always desired to keep property in their families, and so insure a continuance of the family line. To this end they have tried to entail legal estates, so that improvident and reckless members of the family could not sell, mortgage, or part with the lands. The courts have always opposed this tendency and devised methods to break the entail, and now it is not possible to leave real property so that it cannot be sold or taken by creditors for more than the limited period of lives in being and twenty-one years after. If an estate is left to a man's children for life and after that to their children when or as they come of age, the limit has been reached and even then the life estate may be sold or mortgaged by the life tenant; or if he cannot pay his debts, his creditors may have it sold. This is the law as to ordinary legal estates, and when the rules as to equitable or trust estates are examined, they are found to follow the law. Hence, it is not possible to hold property together any longer by means of a trust estate than when limitations are imposed to restrict the sale of the legal estate.

It is possible in some states to make what is called a "spendthrift trust," whereby the income of property in the hands of trustees may be paid to a person, and he be restrained from anticipating it or from assigning it, and his creditors are not allowed to take it to satisfy his debts. Where there are no statutes of this kind, it may be provided that the income shall be paid to the beneficiary during his life, or until he tries to

sell it, or becomes bankrupt. In trusts of this kind it must be provided that on the happening of either contingency the trust income goes to the next beneficiary or to some other person or object during the life of the beneficiary who loses it.

It is possible to provide for married women, for children, and for those incompetent to manage their own affairs, by leaving property in trust for their benefit, without fear of its coming to an end before their death; but a trust income for anyone of sound mind and age may be sold by him or can be taken by his creditors, unless, as has been stated, it is prescribed that the trust income is to go to someone else when the beneficiary alienates his estate or becomes a bankrupt.

While the foregoing is a general statement of the law, some states have repudiated it, and in those states provisions against anticipation or assignment and provisions against any liability to creditors have been sustained. Among these states are California, Massachusetts, Missouri, Pennsylvania, and others. In some states statutes provide that trusts shall be exempt from liability to creditors, unless the debtor himself created the trust.

Another exception is where a trust income is to be used at the discretion of the trustees for the benefit of a person and his family or for the support of the party and the education and maintenance of his children. In such case, the party cannot assign the income, nor, if he becomes insolvent, can his creditors reach it. In any cases of this kind competent counsel should be employed to draft the instrument that creates the trust, and the statutes and decisions of the particular state should be carefully examined.

§ 371. Trusts to Accumulate Income

Not infrequently property has been left to trustees, to accumulate the income for a period, and then to bestow the increased estate on some living descendant. Originally, the only

limit on bequests of this kind was the general rule of a life or lives in being and twenty-one years more. A man named Thelluson in England contrived to combine the limitations so that his estate, amounting to some $3,000,000, would accumulate for from seventy-five to one hundred years, at which time it was to go to some remote descendant, who would have been the richest man in England. The plan did not meet with approval and Parliament cut down the period for which accumulation would be allowed.[1]

In this country many of the states have cut short the period; where this has not been done, the common law period as given would prevail. In New York and some other states no accumulation for a longer period than the minority of one or more persons "then in being" is allowed. In each state it would be necessary to investigate the local law. An accumulation for a charitable purpose would be subject to any statutes on the subject.

§ 372. The Rule Against Perpetuities

Men who have secured property generally want to hand it down to those of their own blood. From king to peasant farmer, it is human nature to desire that what they have owned shall go on down to their descendants and not into the hands of strangers. By will or by operation of law, their property will go to their descendants. It would continue to descend in this way if their descendants would keep possession. If each generation would instil habits of care, thrift, temperance, and foresightedness into the children, who make the next generation, estates would not be wasted and dissipated. In some

[1] H. G. Wells, in "When the Sleeper Wakes," has made use of the law on this subject. The hero, a young man of large property, falls into a protracted cataleptic sleep. By his skilled physicians he is kept in a glass compartment at an even temperature and is supplied with nourishment and pure air. As the trance continues, a board of able trustees is appointed to manage his wealth. He remains in this dormant condition for a couple of centuries, at the end of which period his estate has absorbed all the existing wealth of the world and his trustees form a plutocracy that rules the earth. Then he wakes and the story begins to get exciting.

families this is successfully done and the members keep their position, stations, and traditions for generation on generation. In most cases, though, fortunes are dissipated and scattered and are rarely if ever accumulated again.

Instead of perpetuating family position by instilling the virtues that make for perpetuity, men have tried in many ways to leave their property so that their heirs cannot sell or transfer it to others. Estates are lost by voluntary alienation—that is, sale by the owner—or by involuntary alienation—that is, sale by the creditors. Wherefore those by whom the estates were established tried in many ways to restrain alienation. If it were possible to do this, the resulting estate would be a perpetuity. A perpetuity has been described as an estate that could not be alienated, even though all mankind joined in the deed.

It has generally been held that it is not good for mankind to hinder the free alienation of property, that it is not good for families to be kept wealthy when they lose the ability to care for their wealth, and that it is not good for the rest of the community to have property tied up and not moving freely from hand to hand. The law has always abhorred a perpetuity. It has been said that "a perpetuity is a thing odious in the law, and destructive to the commonwealth; it would stop commerce and prevent the circulation of property." [2]

Our rule against perpetuities comes to us as the result of the continued effort of the landed families in England to tie up their property and keep it in the family, and the efforts of the courts to abridge and curtail these attempts. As is the case with other expedients, it is a compromise.

The rule broadly stated is that no estate can be held from alienation for longer than a life or lives in being and twenty-one years after, and in case of a posthumous child, who would

[2] Duke of Norfolk's Case, 1 Vern. (Eng.) 164.

inherit, at most nine months longer. At the end of the period limited, the heir or heirs who take may alienate or mortgage or dispose of the estate at their pleasure.

At the present time large estates are more likely to be broken up by heavy inheritance taxes and division among numerous devisees and legatees.

§ 373. Trusts for Charity

"Charity" in this sense has a broad meaning. It includes all institutions designed to help, to raise, to educate, or in any way to do good to men. It takes in refuges, asylums, hospitals, schools, colleges, libraries, churches, and associations and organizations of all kinds to promote education, useful arts, or religion.

Many men when they make their wills desire to leave some of their wealth broadly to help their race. Where the amount so left is large, and no existing institution is satisfactory, it is common to leave money and property to a board of trustees, in trust, to apply the principal or income to the promotion of whatever cause or causes the testator had most at heart.

The most conspicuous examples of this form of trust are the great foundations under the names of Russell Sage, Carnegie, and Rockefeller. The Smithsonian Institute and many of our colleges and universities are similar trusts.

Many hospitals and libraries and homes for orphans and the aged have been formed in like manner.

After an institution is once started in this manner, others may make gifts or leave legacies to the same board of trustees, in trust for the same purposes. Then gradually these trust funds may become of large amount and their conduct and control may easily involve the maintenance of a large organization.

It should be said that the rule against perpetuities does not apply to funds left for the maintenance of a charity.

Review Questions

1. What are the more usual objects of trusts? What is the effect on the trust when the object has been fulfilled? What legal limit is there in your state to the duration of personal trusts? Is a trust for business purposes so limited? Would the limitation apply to a charitable trust?
2. What is meant by "entail"? In your state how long can an estate be kept in the family? Is there any difference as to duration between a trust estate and a legal estate? Can a spendthrift trust be created in your state?
3. Do the courts favor accumulation of income? What is the rule in your state?
4. What is a perpetuity? What is the economic objection to perpetuities? What is the attitude of the law? What tends to break up large estates now?
5. What is the legal meaning of "charity"? What charitable trusts do you know of? Does the rule against perpetuities apply to charitable trusts?

CHAPTER XLII

PARTIES TO TRUSTS

§ 374. Who May Create a Trust

It may be broadly said that everyone who is competent to make a will or to enter into a contract is competent to create a trust. Ownership of property and power to transfer it are all that is required to make a trust. If any solvent person has full title to property and has capacity to contract, he can transfer the legal title to a trustee and either retain the equitable title himself or transfer the equitable interest to someone else.

A person who is insolvent could not create a trust that would put his assets out of reach of his creditors. A person incompetent to contract by reason of minority, lunacy, or some other incapacity, could not, as a rule, create a trust that would bind him. The trust so created would be voidable.

Married women are practically under no disabilities in this country and may create trusts at their discretion.

The state itself, by legislation or by its duly authorized officers, may create a trust, convey property, and appoint trustees.[1]

§ 375. Corporations May Create Trusts

An individual has unlimited powers and may engage in any business or do any other thing he desires to do. A corporation is an artificial being created by the law of the state, and its power is limited by its charter. It may engage only in such business as its charter specifies and may do only those things

[1] Perry on Trusts, § 30.

that tend to promote and carry out the particular undertakings so authorized. A corporation may enter into contracts and may sell or mortgage its real and personal property so far as is necessary to carry out its corporate purposes. If the creation of a trust tended to promote the purposes for which the corporation was created, it could undoubtedly lawfully create such a trust and its action would be sustained. There are not many cases, however, where the creation of a trust would be an appropriate corporate action, and the question of corporate capacity to create a trust seldom arises, except in those cases where it executes a deed of trust to secure its bondholders. In such cases, the trustee is usually a trust company, and the law governing is not relevant to the purposes of this part, which deals only with the law of voluntary and testamentary trusts.

§ 376. Trusts Created by Minors, Lunatics, or Aliens

A trust created by a minor is good until the infant chooses to repudiate it, as is the case with the sale of his own property by a minor. If a minor owned property he could create a trust, but he could avoid it whenever he desired, and a court of equity would not hold him to his transfer to the trustee. In any state where minors of a certain age can make a valid will, a testamentary trust so created would be enforced.

A deed or trust created by a person adjudged insane would be void. A deed or trust created by a person not under guardianship and in control of his property would be good until avoided either by the lunatic or one of his friends, or by his representatives. If an insane person had not been declared so by a competent court, he could make a trust and this would be good until made void by the proper court. Courts of equity, however, will not usually avoid a trust so created if the contents are reasonable and fair.

When an alien can hold real estate, he can create a trust and appoint a trustee. The trustee will take whatever legal

title the alien had, and no more. In some states an alien may hold land only so long as the state does not interfere. Any trustee he might appoint would hold by no better title. An alien can own personal property and deal with it in all respects as a citizen can. He can therefore create a trust of personal property.

§ 377. Who May Be a Trustee

The following statement from an English work sums up the qualifications necessary for a trustee:

> A person to be appointed trustee should be (1) a person capable of taking and holding the legal estate, and (2) possessed of legal capacity and natural ability to execute the trust, and (3) domiciled within the jurisdiction of the court.[2]

Any person or corporation capable of taking the legal title to property may take it subject to a trust and in that case would become a trustee. If afterwards the person or the corporation was not capable of performing or executing the trust, the court of equity having jurisdiction would execute the trust by decree, or it would remove the trustee named and appoint some other who was capable.

> It is a rule that admits of no exception, that equity never wants a trustee, or in other words, that if a trust is once properly created, the incompetency, disability, death, or non-appointment of a trustee shall not defeat it.[3]

In making appointments the court will have regard to the wishes of the person creating the trust, if possible, and would not appoint one who was objectionable to the creator. Neither would a court appoint a person who was not likely to be impartial as between those interested in the trust, for it is the essence of a trustee's duty to hold an even hand between all

[2] Lewin on Trusts, p. 27.
[3] Perry on Trusts, § 38.

the beneficiaries. Courts will always have a regard to the promotion of the trust and endeavor to appoint someone who will carry the trust into execution.

§ 378. Corporations as Trustees

At the present day, corporations of every description may take and hold property, as trustees, for purposes not foreign to the objects for which they were created. Corporations are confined by the terms of their charters to certain purposes therein specified, and cannot do things which their charters or the laws of the state do not authorize. On this account they can act as trustees only in such directions as will tend to further the general purposes for which they were specifically created or incorporated.

A corporation acting as a trustee is under the jurisdiction of courts of equity and will be compelled to carry the trusts into execution, and the process of the court may be called for in case of failure.

If a corporation has not been given power by the state to hold lands, it cannot properly hold them as a trustee, but where such is the case it could hold against everyone but the state. In other words, such an act is *ultra vires,* but no one but the state has the right to bring action against such trustee. In some cases of this kind where land is left in trust to a corporation or organization not capable of holding it as trustee, the court will appoint a capable trustee or will enforce the trust against the heir to whom it might go. In other cases such an attempt is null and void and the property goes to the heirs free from the trust. If such a trust is to be created, skilled counsel should be consulted.

§ 379. Other Corporate Bodies as Trustees

Municipal corporations, towns, school boards, and other governmental bodies may be trustees for educational, philan-

thropic, and public welfare purposes. It would usually be *ultra vires,* that is, beyond the powers of a municipal corporation, to act as a trustee for particular private individuals.

§ 380. Banks and Trust Companies as Trustees

Trust companies are corporations organized for the express purpose of acting as trustees. Any national bank may qualify and is then authorized to take and administer trusts to the same extent as a trust company. The advantages of having trusts under corporate management of this kind are great. The whole subject is of so much importance that Part V of this work is devoted solely to this subject.

§ 381. Unincorporated Associations as Trustees

At common law unincorporated associations cannot be trustees for a charitable purpose. It has been held in New York and Virginia that this rule holds in those states. Elsewhere the English statute that modified the common law is followed and an unincorporated association can take a charitable trust.

§ 382. Capacity for Trusteeship

There was once a question as to the capacity of married women to act as trustees, but the restrictions against married women have been so generally removed throughout the United States that they may be considered as no less qualified than married men.

A minor may be an agent and as an agent can act, but should not be named as a trustee. If a minor were appointed, the estate would pass to him and the court would compel him or his guardian to execute the trust or would remove him and appoint someone competent to act.

An alien living in this country could take the personal property as a trustee to the same extent that a citizen could.

He may take real estate if the state allows an alien to take a legal title. If the alien were domiciled abroad, he would not be within the jurisdiction of any of our courts, and that would probably disqualify him from acting.

A court would not usually appoint a resident of another state a trustee, but the creator of a trust could do so. It might in some cases make it difficult for the beneficiary to enforce his rights.

A lunatic or an habitual drunkard may be appointed trustee, but cannot execute any trust that requires the exercise of discretion. The court may remove such a trustee or the trust may be administered by his guardian. Where a lunatic is made a trustee or a trustee becomes insane, (1) the trust may be administered by his guardian, or (2) it may be administered by the court, or (3) he may be removed and a sane person appointed in his stead.[4]

Bankruptcy would not necessarily incapacitate a person for acting as trustee. His creditors would have no claim, and his bankruptcy would not affect his obligation as trustee. Insolvency, though, may be good ground in some cases for removal.

Beneficiaries should not be appointed trustees, as their duties and interests might conflict. Near relatives and persons closely connected should not be selected, as there might be the same conflict of interests. There is no positive law against such appointments, and sometimes they are made.

§ 383. Who May Be a Beneficiary

Generally, any person or persons who can take a legal title to property can also take an equitable interest and may be the beneficiary of a trust estate.

An alien may be the beneficiary where the trust property is personalty. Technically, objection might be made in some

[4] Perry on Trusts, § 58.

jurisdictions to an alien being the *cestui que trust* of an estate in land.

Any one of the states or the United States might be a *cestui que trust*. There is no legal rule to prevent. A city or any other corporate public agency could be the beneficiary of a trust. Where, however, private corporations cannot legally hold lands, they cannot evade the law by being made *cestuis que trust* of land. Otherwise, corporations generally may be the beneficiaries of trust estates of all kinds.

Corporations can be the beneficiaries of trusts of personal property to the same extent as natural persons.

Voluntary associations, societies, clubs, etc., may be *cestuis que trust* of trusts of personal property. But though such societies cannot take the legal title to real property, they can at common law enjoy as beneficiaries a trust in real estate.

Charitable associations and corporations, if in a locality where they are not able to take the legal title to land, may nevertheless take the fruits of trusts of both realty and personalty. Such trusts are good even when the property is left in general terms, as, "for the use and benefit of the poor people of Clermont County." In such cases, even if the immediate objects of the trust should fail, equity would select others of the same general class. A bequest for the benefit of "the poor saints" of a locality was held to be too vague to be possible of fulfilment, though the court added that if the testator "had made it plain whom he thought were saints, the Court would enforce the trust."

Review Questions

1. Who may make a trust? What limitations are there on an insolvent person?
2. When may a corporation create a trust?

3. Would a trust by a minor be good? Would a trust by a lunatic be held good? Can an alien create a trust?
4. What requisites should an individual trustee have? If a person or corporation appointed trustee was not capable of acting as such, what would be done? What rules would govern the court in making such an appointment?
5. What governmental corporations may be trustees? Could any such corporation be trustee for an individual?
6. Can corporations be trustees? What corporations can act as trustees? What might prevent a corporation acting as trustee?
7. What corporations are specially qualified to act as trustees?
8. Can an unincorporated association undertake a charitable trust in your state?
9. Can a married woman act as trustee? Can a minor? Can an alien? Can a resident of another state? What can be done if a lunatic is appointed as trustee? Would insolvency incapacitate a trustee? Can a beneficiary under a trust be one of the trustees?
10. Who can be a *cestui que trust*? Where aliens or corporations cannot hold land, can they evade the law by having a trustee hold it? May a Greek letter society be a *cestui que trust* of a piece of land?

CHAPTER XLIII

TRUSTEES

§ 384. Appointment of Trustees

Trustees are appointed by various means. Some of these are as follows:

1. By deed or declaration of trust.
2. By will, in which case they are called "testamentary trustees."
3. By agreement.
4. By the court.
5. By implication of law.
6. By self-perpetuating boards.
7. By the exercise of the power of appointment.

When a voluntary trust is created by deed or declaration of trust, the creator names the trustees in the instrument. The creator should know beforehand that the proposed trustees will accept. The same or greater caution should be exercised in naming a trustee in a will, because in case the trustee declines the appointment, the testator cannot appoint another.

In appointing trustees as a business arrangement, the same care should be used as in naming directors for a new corporation—men must be chosen who are interested and who have some knowledge and skill in the conduct of the particular business.

A man may make himself a trustee by declaration of trust made or published, or by delivery of the income from the estate which he holds as intended trustee, to the beneficiary in pursuance of the trust.

The court will appoint a trustee where a trust may fail for lack of a trustee, or where a named trustee refuses to serve or has died, or where a vacancy from any cause exists and no other means have been provided for filling the vacancy. In all matters pertaining to testamentary trusts, the court of probate exercises jurisdiction and appoints trustees to fill vacancies. In other trust matters, a court of equity would exercise the power to appoint needed trustees.

In all cases where a trust is implied, it involves the appointment of a trustee who may not disclaim or resign, but is forced to act. (See Chapter XLV, "Implied Trusts.")

Where a trust is to endure for some long period, as when a charity or educational organization is founded, the board of trustees is often given the power of filling vacancies as they occur. The result is a self-perpetuating board. (See § 389.)

Where the creator or testator provides a method of filling vacancies as they occur, the power must be exercised by the persons and in the precise method prescribed. (See § 390.)

§ 385. Rules for Appointing Trustees

In appointing trustees, courts of equity will in general be guided by the following rules:

1. The court will try to carry into effect the wishes of the creator of the trust, so far as these are indicated in the instrument creating the trust or can clearly be inferred from it.

2. The court will not appoint a trustee in the interest of some of the beneficiaries or a trustee who was not desired by the testator, or one who is opposed to the interests of some of the beneficiaries. A trustee should look equally after the interests of all and should not be biased for or against any member or class of members of his *cestuis que trust.*

3. The appointment will be made to promote and make the trust most effective, and to carry the trust into execution is the main purpose of the appointment.

§ 386. Acceptance or Disclaimer

No man can, by any express trust, be made a trustee against his will. Even if he has promised to act as a trustee, he may refuse if he finds that he cannot undertake the responsibility. If a trustee does not mean to accept, he should disclaim positively in writing so that there shall be no doubt as to his attitude. A trust may in some cases be disclaimed in open court by counsel.

A trusteeship created by deed or declaration of trust should have an acceptance clause as part of the instrument, and this, signed by the trustees, would make the best possible evidence of acceptance.

Where a trust is created by will, an executor and trustee will accept by qualifying and acting as executor. In most states of the Union, executors and trustees are required to give bond before acting. Where this is the case, the filing of a bond would be an acceptance, and failure to give bond would be a disclaimer. If there were no statutes as to bond, the probating of the will by the executor and trustee would be an acceptance of the trust.

If there is no formal acceptance of a trust, acceptance may be presumed from acts of the appointee. Oral evidence of what a trustee has said or done or admitted may be used to prove his acceptance. If an appointee does anything in regard to the trust property, it will be evidence of acceptance.

If, in any trust, funds or property are transferred to the trustee with his acquiescence, this would be evidence of acceptance. A trustee will not take title to the property unless he expressly or impliedly accepts the office tendered him.

§ 387. Executors Acting as Trustees

If a testator intends to appoint a person both executor and trustee under his will, he should make it clear, for the offices may be so distinguished that acting as executor might not

make him trustee. If by the terms of the will the executor is to keep the property or a portion of it as trustee, his bond as executor will hold as security for his conduct as a trustee until he takes over the property as trustee and gives bond in that capacity. Whenever the will distinguishes between the duties of the executor and the subsequent duties as trustee, there should be a separate bond given, even though the same person was both executor and trustee.

In some states it is required that where the same persons are executors and trustees under the will, they should settle and render final account as executors before they assume their duties as trustees. Under some circumstances, the trustees are entitled to compensation distinct from, and in addition to, their fees as executors. (See § 461.)

§ 388. Removal or Resignation

After a trustee has accepted he is held to the performance of his duties until his office is terminated, which may be in any one of the following ways:

1. Removal by a court having jurisdiction.
2. Resignation by permission of court or by concurrence of all interested.
3. Discharge and substitution by the method, if any, indicated in the instrument creating the trust.
4. By death.

The courts will remove a trustee and appoint a successor where there is negligence, bad faith, or want of capacity. The courts will not act hastily in such matters, and are justified in using their sound discretion. The courts will remove trustees where there is a real danger that the trust funds will be lost or placed in jeopardy.

Bankruptcy would not disqualify an executor or a trustee

nor affect the trust estate in his hands, and his discharge in bankruptcy does not release him from his obligations under the trust. Also in this country trustees are required in most cases to give bond for the security of the trust fund. In some cases, however, insolvency is a good reason for removal or resignation.

There are many cases where it is better for all concerned to accept a trustee's resignation and allow the court to substitute someone else. A trustee has no right to resign and it may be done only with the permission of the court or by the consent of all the *cestuis que trust,* assuming that they are all capable and of age to consent.

The proceedings for removal would have to be conducted by competent counsel and all persons interested would have to receive notice. It may be a troublesome and costly proceeding.

It is possible for the creator of a trust to provide for the removal or the resignation of a trustee or trustees and for the appointment of others. This subject is discussed in the next sections.

§ 389. Self-Perpetuating Boards of Trustees

In the case of charities and of educational and altruistic trusts, it is common to provide that vacancies as they occur shall be filled by the remaining members of the board, so that in effect the trustees are self-perpetuating. There are advantages in this plan and also grave disadvantages. It may in most cases be better to provide that certain outside bodies interested in the general purpose, should elect at least a portion of the board, and fill vacancies as they occur.

Every well-drawn instrument, creating trusts intended to continue for any considerable time, should contain authority and power for any of the trustees to relinquish the trust, as well as provisions for filling vacancies occasioned by resig-

nation, death, or incapacity. Such provisions save the cost and trouble of constant applications to courts. In framing these powers, great care should be taken to provide for every possible contingency in which a resignation or new appointment may become convenient or necessary. The power should clearly express the cases in which new trustees may be appointed, and embrace every event which can render such an appointment necessary or desirable, as the death of all, any one, or more of the original or substituted trustees, their absence from the country or state, their wish to resign, their original refusal to accept, and their future incapacity or unfitness to discharge the duties; the instrument should also point out clearly and by whom and in what manner the new appointments are to be made. Such provisions are extremely convenient, and save much perplexity, expense, and trouble.[1]

§ 390. Powers to Appoint

The duties and powers of trustees cannot be delegated to others, unless there is express authority for that purpose given in the instrument creating the trust. It follows, that a power to appoint new trustees can seldom or never exist, except in express trusts created by deed or will. The person who creates the trust may mould it into whatever form he pleases; he may therefore determine in what manner, in what event, and upon what condition the original trustees may retire and new trustees may be substituted. All this is fully within his power; and he can make any legal provisions which he may think proper for the continuation and succession of trustees during the continuance of the trust.[2]

Where a trust is to endure any length of time, the creator should explicitly state how trustees may withdraw or be removed, and how vacancies are to be filled in order to avoid the expense and trouble of application to the court. Such power to appoint new trustees may be given to any of the following:

[1] Perry on Trusts, § 288.
[2] Perry on Trusts, § 287.

1. The surviving or remaining trustee or trustees.
2. The beneficiary or beneficiaries who are of age.
3. Any other person or persons.

The instrument should also provide explicitly as follows:

1. The time, occasion, or event that will vacate a trusteeship.
2. The persons who may be appointed to fill the vacancy.
3. The manner of making the new appointment.

Review Questions

1. How are trustees appointed? In a voluntary trust or testamentary trust, who names the trustees? How can a man make himself a trustee? If an appointed trustee declines to act, what is done?
2. If a court appoints trustees, what does it try to do?
3. Can a man be made a trustee of an express trust against his will? How can he avoid serving? How can he accept? If a trustee takes over trust property, what is the effect?
4. Why should the duties of an executor and a trustee be distinguished?
5. How may a trusteeship be terminated? When may a trustee be removed? Would a trustee be removed for insolvency? Can a trustee resign at pleasure?
6. What is a self-perpetuating board? Against what contingencies should a trust instrument provide?
7. Who may be authorized to fill vacancies? What other provisions may be made?

CHAPTER XLIV

EXPRESS TRUSTS

§ 391. Declaration of Trust

It is usual to create a trust by an instrument in writing called a "declaration of trust." The general rule is that a trust may be created by word of mouth if it concerns only personal property. In Georgia this is not the case.

Nearly every state has enacted the Statute of Frauds, which prescribes that all instruments transferring a trust or confidence in lands shall be evidenced by some writing signed by the creator or that such transfer be created by his last will in writing. The statute does not apply to a trust of personalty, but a trust of any kind should be shown by a written instrument.

The instrument creating a trust may be a will, a trust agreement, or a declaration of trust. For an example of a trust instrument see Form 7.

§ 392. A Trust Instrument Cannot Be Partly Oral

A written trust agreement of any kind cannot be varied by oral evidence. A trust created by will is subject to the rules governing wills, by which a will cannot be affected by other evidence as to the testator's intentions.

What is called a "latent ambiguity" in a will can be explained. That is, if a trust were created in favor of Henry Brown of Salem, and it were claimed by two parties of that name, evidence could be adduced to show that one was a friend and the other was a transient acquaintance.

If, however, the language was ambiguous and it was doubtful whether or not a trust in favor of Henry Brown had been

created, that would be a patent ambiguity and could not be explained by oral evidence as to what the testator intended, but would have to be construed by the rules of legal interpretation.

In any case, where an express trust relative to lands is to be proved, it must be established by written evidence and cannot be varied by oral evidence.

§ 393. Testamentary Trusts

Any trust created by will is a testamentary trust. It is the commonest form of trust. Its object is usually to provide a safe income for dependents with no risk of losing the principal. The property, clearly described and indicated, is left to the trustee or trustees by the usual words of bequest or devise, and then are added the words "in trust" or "to hold the same in trust," and then follow any words necessary to describe the *cestuis que trust* and to prescribe how the trust is to be administered, what disposition is to be made of the income, and how the trust is to be terminated. Any special powers or specific directions should be clearly and briefly set forth, such as to:

> Sell said real estate at public or private sale at such time or times and on such terms as in the discretion of said trustees shall be best and the proceeds of such sales shall be invested in properly diversified preferred stock and bonds of established industrial and transportation corporations and said trustees may sell any such securities, and may reinvest the proceeds at their discretion and shall not be responsible save for negligence or bad faith.

In regard to any such trust, it is necessary that the will by which it is created shall conform to the laws of the state in which the land is situated. If these formalities are not observed, the will cannot be admitted to probate and in such case the trust fails and is a nullity. The trust in all such cases depends on the validity of the will.

Any testamentary trust should be clearly set forth and all essentials should be given so that there may be no confusion as to the property, the trustees, the *cestui que trust,* the effect of the trust, or the final disposition of the property.

§ 394. Voluntary Trusts

A man before he dies may make a voluntary trust for the benefit of his dependents, for any educational or philanthropical institution, or for himself. If it is personal property, this is done by executing a declaration of trust, if real property by executing a deed of trust. The term "voluntary trust" implies that the creator of a trust acts voluntarily, of his own initiative, and not for a consideration or because of a contract obligation. In case of a voluntary trust, it does not become binding until it is executed and carried into effect. A declaration of trust in shares of stock and bonds would not take effect until they had been turned over by signatures and transfer. A deed of trust would have to be executed with all the formalities pertaining to conveyances of land and delivery to the trustees or record on the public register. After a trust has been executed in this manner, the fact that the trustee [1] refused to act would not defeat the trust. A court of equity will not allow a trust to fail for want of a trustee, but will remove one who will not do his duty and will appoint one to fill any vacancy, however caused. For a form of deed or declaration of trust see Form 7.

§ 395. Reserving the Right to Revoke a Trust

A voluntary trust, as its name implies, is not a matter of obligation, but having once been carried into effect and the trustee having been placed in possession, it is an executed trust and cannot be recalled, save by the voluntary assent of both the trustees and the *cestui que trust.*

[1] O'Neil v. Greenwood, 106 Mich. 572.

In some cases there is trouble in telling when a trust has been perfected so that the creator cannot recall it. There is some conflict in the decisions on this point. When a deed of trust has been executed and delivered and nothing more remains to be done by the grantor, the trust is complete and beyond recall. In case of stocks and bonds, a duly executed transfer and delivery to the trustee would complete the trust. A deposit in a savings bank in the name of the depositor as trustee for a named beneficiary, accompanied by notice to the beneficiary or to somebody representing him, would be sufficient to create a trust. A voluntary deposit of one's own funds nominally as trustee for another, but without notice to that other, will not create a trust. In New York it is held that such a deposit without notice to the beneficiary could be revoked at any time before death, but that at death the gift would go to the beneficiary. A delivery of the pass-book to the beneficiary at any time would pass the title and end any right to revoke.

In all such cases the creator should do whatever he intends to do, positively and completely. If such an arrangement is not to be permanent, the creator of the trust should reserve the right to revoke it. If this is done, the trust may be terminated at any time during the life of the creator. The usual language in such cases is "reserving, however, the right to revoke and recall such trust at any time during the life of said grantor." Any language that expressed clearly the same intention would suffice.

A man may create a trust for himself, the funds being placed in the hands of a financial corporation, usually in trust, to pay the income of the same to the creator during his life and after his death to other beneficiaries, or at his death the whole property to be transferred to persons or institutions designated by the creator of the trust. The power to revoke should be expressly reserved if it is so desired.

§ 396. Revoking a Trust

A completed trust cannot be revoked without the consent of all the beneficiaries, unless the right to revoke has been expressly reserved. If some of the *cestuis que trust* are not yet born or are not of age, the trust cannot be revoked for lack of their consent.

If there is any reason for believing that the creator of the trust was unduly influenced or was wrongly advised, or that the power of revocation was omitted by reason of fraud, accident, or mistake, a court of equity will set the trust aside.

If a power of revocation has been reserved, it must be exercised as prescribed, but if merely the right to revoke is reserved to the creator of the trust, he should revoke by an instrument equal in formality and dignity to the instrument by which the trust was created.

§ 397. An Agreement to Create a Trust

If a contract were entered into for a valuable consideration, to create a trust for the benefit of the party giving the consideration or for a third party, the contract would be enforcible and the party obligating himself would be compelled to carry out the agreement. In such case the resulting trust would not strictly be a voluntary trust, though in effect it would be the same.

When there is no consideration, equity will not enforce a promise or an executory trust.

§ 398. Trustees to Carry out Subscription Agreements

Another case of a contract trust is where several parties agree to contribute specified amounts to trustees to form a corporation to build a church, or even to carry out some business operation. In all such cases the contract is a legal contract and can be enforced as any other contract is enforced.

The trust so created is an express trust, the terms of which

may be set forth in the contract to create the trust or in a further instrument signed by the trustees. The interest of the *cestuis que trust* may be evidenced by transferable certificates signed by the trustees and based on the formal trust agreement. Such a trust was the original Standard Oil Trust, which was declared illegal only because of its illegal purpose—to restrain competition. Such a trust for a legal purpose is not uncommon and has some advantages as a means of business association, whereby the creators and *cestuis que trust* can invest their means and at the same time avoid partnership liability. They have been most extensively used in Massachusetts for associations holding real estate.[2]

Review Questions

1. What is a declaration of trust? In what two ways may a trust in land be created?
2. Can a trust in land be partly written and partly oral? What is a latent ambiguity? What is a patent ambiguity?
3. What is a testamentary trust? What is its usual object? Outline its form. Phrase directions to sell land. To invest the proceeds in securities.
4. What is a trust made before death called? Why is the word "voluntary" used in this connection? How would a deed of trust be executed? According to what laws should a deed of trust be executed?
5. Can a man be compelled to execute a declaration of trust? Can a declaration of trust be revoked? In your state, how could a savings bank deposit be made an effective trust for another? How can a power to revoke be reserved? How can a man create a trust for himself? Can such a trust be revoked?
6. How can a complete trust be revoked? When will a court of

[2] If the reader desires to study this phase of the subject further he can consult the following later works: Thompson, Business Trusts as Substitutes for Business Corporations; Wrightington, Unincorporated Associations; Sears, Trust Estates as Business Companies; Chandler, Express Trusts Under the Common Law; and Wilgus, Corporations and Express Trusts as Business Organizations (an article in 13 Mich. Law Review, p. 70).

equity set a trust aside? Where a right to revoke has been legally reserved, how should it be exercised?

7. Can a binding agreement to execute a trust be made? Will such an agreement be enforced? What may make it void?
8. May trustees enforce subscription agreements? May this form be used to create a business organization? How may the interests of the subscribers be evidenced? Where has this form been used extensively?

CHAPTER XLV

IMPLIED TRUSTS

§ 399. Trusts That Are Implied

In contradistinction to express trusts, there are cases where the courts imply a trust: (1) from the language used, or (2) from the circumstances, or (3) to remedy an attempted fraud. These three cases of implied trusts are outlined as follows:

1. Trusts implied from the language used. These are known simply as "implied trusts." Implied trusts, proper, are "trusts that the courts imply from the words of an instrument where no express trust is declared, but such words are used that the court infers or implies that it was the purpose or intention of the parties to create a trust." [1]

2. Trusts resulting from the circumstances. These are termed "resulting trusts." "A 'resulting trust' is a trust raised by implication or construction of law, and presumed to exist from the supposed intention of the parties and the nature of the transaction." [2]

3. Trusts construed by the courts to remedy an attempted fraud. These are known as "constructive trusts." "Constructive trusts are forced by the courts upon the trustee for the purpose of working out right and justice or frustrating fraud. They have none of the elements of an express trust, but arise entirely by operation of the law without reference to any actual or supposed intention of creating a trust and often directly contrary to such intention." [3]

Excepting only the first class, the subject matter is out-

[1] 39 Cyc. 26.
[2] 39 Cyc. 27.
[3] *Ibid.*

side of the purposes of this book, and the two classes, resulting and constructive trusts, are here touched upon only to round out the treatment of the general subject as a whole.

§ 400. When a Trust Is Implied

There are many cases where the courts imply a trust from the nature of the transaction and from the words used. If in any case it can fairly be implied that a trust arrangement was intended, the courts will enforce a trust. Usually such trusts arise from the use of what are called "precatory" words in wills. It happens many times that a testator makes a bequest to someone and adds, "I desire," or some other words indicating the same thing, that the legatee shall pay the income or a part of the income or a special sum of money to another. In most of the states any such expression is held to show an intention to create a trust, and the implied trust will be carried into effect by declaring the first taker a trustee for those whom the testator desired to benefit.

The following words have been held to justify an implied trust: "wish and request," "entreat," "most heartily entreat," "authorize and empower," "recommend," and "trust and confide." Such language is held to show an intention that a trust should be created. The words are held to be a polite form of command rather than merely a request.

The question is always: What was the intention of the testator? And if this intention can be gathered from the will, no such trust estate will be implied. Where the intention is not clear, and to imply a trust is likely to bring to pass what the testator desired, a trust will be implied.

§ 401. Wills Should Avoid Ambiguity

If a testator intends to create a trust he should do so by using the usual words "in trust," and should thus make sure that there is no doubt as to what he really means. If instead he

wishes to leave it to the discretion of the legatee and not to create a trust, it is a simple matter so to express it. It is also easy to express a wish or request in ambiguous shape, thereby giving the court much trouble in deciding whether or not it creates a trust, for:

1. Precatory words may create a trust.
2. Discretionary expressions may prevent a trust from being implied.
3. Failure or uncertainty in the object may be an element that will prevent an implied trust.[4]

The testator should point out the objects, the property, and the way in which it is to go, so clearly that his intention cannot be doubted.

Trusts are sometimes implied when property is given to a parent for the care and maintenance of his family or children. This is a peculiar form of trust, for the amount to be used for the beneficiaries is uncertain and the trustee is entitled to any residue.

Where a legacy is left to a person to buy a house, to start a business, or to pay his way through college, the legatee takes it absolutely, and free of any trust, and may apply it to other purposes. A court cannot supervise expenditures.

It is worth while to repeat that definiteness in all matters affecting money or property saves much trouble. A few well chosen words will save costs, litigation, and possible failure of a good plan.

§ 402. Resulting Trusts

A resulting trust is a trust raised by implication or construction of law, and presumed to exist from the supposed intention of the parties and the nature of the transaction.[5]

[4] Hill on Trustees (4th Am. ed.), p. 73.
[5] 39 Cyc. 26.

When in order to do justice it is necessary to imply a trust, it is a resulting trust; that is, from the circumstances a trust results.

If a trustee used trust funds to purchase real estate in his own name, it is presumed that he holds it as a trustee for the original *cestui que trust*. A trust results from his action.

If a partner uses the firm funds to buy a piece of land, and he takes title in his own name, there is a resulting trust in favor of the partnership.

If an estate is taken in the name of one person, while the price is paid by another, there is a resulting trust in favor of the person who furnished the price, unless there is some good reason otherwise to explain the transaction.

§ 403. Constructive Trusts

Under certain circumstances of fraud, the courts, to right the wrong, construe a trust. That is, a constructive trust is a trust forced upon a party who has obtained property by fraud in favor of the person who has been defrauded.

If anyone, by fraud, deceit, or crooked dealing of any kind, secures a conveyance or transfer of another's property to himself, he will be held to have made himself trustee for the benefit of the one who has been defrauded, and a court of equity will force him to account for income or to do whatever a trustee could be compelled to do in similar case.

If a guardian bought property of his ward, a court of equity would construe it as *prima facie* fraudulent and would make the guardian a trustee of the property for the benefit of his ward. If an attorney had dealings with his client, they would be viewed with suspicion and the attorney might be held to be a trustee. If an agent employed to buy a property for his principal buys it for himself, he will be held to hold as a trustee for his principal. Broadly, no one will be allowed to hold a benefit acquired by fraud or a breach of his duty.

The cases where this doctrine has been invoked are manifold, and courts of equity avoid closely defining the fraud on which they will act, in order to prevent the ill-disposed from evading the letter of the definition.

> The leading principle of this remedial justice is by way of equitable construction to convert the fraudulent holder of property into a trustee, and to preserve the property itself as a fund for the purpose of recompense.[6]

Review Questions

1. When is a trust implied? How are implied trusts classified? What are implied trusts, proper? What is a resulting trust? What are constructive trusts? Which classes of trusts are discussed in this book?
2. What are precatory words? "I leave my entire personal estate to my wife Isabel Lloyd, in confidence that she will in her discretion provide an adequate support for my niece Ada during her life." In your opinion, would this be an implied trust? If the widow gave the niece $500 per annum, would a court of equity be likely to increase the amount?
3. How can a testator avoid possible lawsuits and ill-feeling? How can a legacy be left for a special purpose?
4. What is a resulting trust? Give a case where the courts would construe a resulting trust? What is the object of the court in implying a resulting trust?
5. When do the courts construe a trust? Give a case where a trust would be construed. Why do courts of equity avoid defining fraud too closely?

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[6] Perry on Trusts, § 170.

CHAPTER XLVI

THE TRUST PROPERTY

§ 404. Property That May Be Held by a Trustee

> Every kind of valuable property, both real and personal, that can be assigned at law may be the subject matter of a trust. Every kind of vested right which the law recognizes as valuable may be transferred in trust, as a receipt for a medicine, the copyright of a book, a patent right, a trade secret, or growing crops.[1]

Generally, anything that can be bought or sold may be assigned in trust.

§ 405. Personal Property Outside of State

If the subject matter of the trust were a herd of thoroughbred cattle on leased land in Kentucky and these had been left by will to a citizen of New York, in trust for the testator's wife, also a citizen of New York, the trustee would take under the will and would be under the control of the Surrogate's Court of New York. Having jurisdiction over the parties, this court could enforce the execution of the trust.

§ 406. Real Estate Outside of State

If part or all of the trust estate is land in another state, and the trustee is within the jurisdiction of the court, the court will enforce its decrees.

A trust created by a citizen of, say, Massachusetts, by will probated in Massachusetts, would give that probate court the right to regulate and control the administration of the trust estate, though both the trustee and the trust estate should

[1] Perry on Trusts, § 67.

be in another state, if the trustee were duly served with process. If the trustee were unfaithful or abused his trust, the court in Massachusetts could remove him and appoint a more faithful trustee.

> The residence of the trustee and *cestui que trust* out of the commonwealth does not take away the power of this court to regulate and control the proper administration of trust estates which are created by wills of citizens of this State, and which have been proved and established by the courts of this commonwealth. The legal existence of the trust takes effect and validity from the proof of the will, and the right of the trustee to receive the trust fund is derived from the decree of the Probate Court. If the trustee is unfaithful or abuses his trust, that court has jurisdiction to remove him in concurrence with this court on the application of those beneficially interested in the estate.[2]

As a general rule, the validity of a trust relating to land would depend on the law of the state in which it was situated. If the laws of the state where the land was situated prohibited certain trusts or limited their duration, the fact that the owner of the land lived in another state and that his will was probated there, would not change the law of the locality, nor would the court attempt to abrogate the local law of another jurisdiction.

§ 407. How Courts of Equity Control Trustees

If a court of equity has control over the person of a trustee because he resides in its jurisdiction, it can, when the property forming the subject matter of the trust is without its jurisdiction, compel the trustee to obey the decrees of the court by serving him with process in contempt. Even where a trustee is domiciled elsewhere or removes elsewhere, he may be served with process if temporarily within the jurisdiction of

[2] Chase v. Chase, 2 Allen (Mass.) 101.

the court and compelled to stay within the jurisdiction until the decree of the court has been performed.

§ 408. The Law That Governs a Trust

Generally, it may be said that the validity of a proposed trust, if of land, is determined by the law of the state where the land is situated, and if the subject matter of the trust is personalty, by the law of the domicile of the creator of the trust. This is, however, a general rule and in any particular case it would be necessary to have the matter looked up by competent counsel. It is not a question upon which a layman, unaided, could well satisfy himself.

§ 409. The Trustee's Estate in Land

The first rule as to a trustee's legal estate is that: "Wherever a trust is created, a legal estate, sufficient for the purposes of the trust, shall if possible be implied in the trustee." The second rule is that: "The estate of the trustee shall not be greater than is necessary to the complete execution of the trust." [8]

§ 410. The Trustee's Estate in Personalty

If the subject matter of the trust to be held by the trustee is personal estate, it becomes the absolute property of the trustee and he can deal with it as his own, but is required to give account of his administration.

Review Questions

1. What property may be held in trust?
2. Where trustee and beneficiary are in the same state, may the property be out of the state?
3. When can land in another state be held in trust? What is the law usually as to a trust in land?

[8] Perry on Trusts, § 312.

4. How can a court of equity enforce its decrees?
5. What is the general rule as to trusts of land and trusts of personalty?
6. What are the two rules as to the estate of the trustee?
7. What control has a trustee over personal property held in trust?

CHAPTER XLVII

CARE OF THE TRUST ESTATE

§ 411. The Trustee's Duty to the Estate

No man is compelled to act as trustee, but if he does accept the office he will be held to its duties and he cannot evade the responsibility. He may be removed for misconduct, he may be discharged by unanimous consent of the beneficiaries if all are competent to consent, or under some jurisdictions he may resign; but otherwise he must do all that his office requires, and is liable for any negligence or misconduct.

> Trustees will be held to great strictness in their dealings with the estate, but courts will treat them leniently when they act in good faith. A trustee is bound to exercise ordinary care and judgment, and it is no excuse for him that he did not possess them; by accepting a trust, whether gratuitous or not, he undertakes that he does possess and will exercise them.[1]
>
> Few persons would be willing to deposit money in savings banks, or to take stock in corporations, with the understanding that the trustees or directors were bound only to exercise slight care, such as inattentive persons would give to their own business, in the management of the large and important interests committed to their hands. When one deposits money in a savings bank, or takes stock in a corporation, thus divesting himself of the immediate control of his property, he expects and has the right to expect, that the trustees or directors, who are chosen to take his place in the management and control of his property, will exercise ordinary care and prudence in the trusts committed to them—the same degree of care and prudence that men prompted by self-interest generally exercise in their own affairs. When

[1] Perry on Trusts, § 401.

> one voluntarily takes the position of trustee or director of a corporation, good faith, exact justice, and public policy unite in requiring of him such a degree of care and prudence and it is a gross breach of duty—*grossa negligentia*—not to bestow them.[2]

If a trustee allowed his lawyer to handle the trust funds and to check out the payments, the trustee would be liable for any loss that occurred. If the trustee deposits the funds in a reputable bank in his name as trustee and they are lost, he is not responsible, for he has done what a careful business man should do. If instead he deposits in his own name or mingles the trust funds or property with his own, he is responsible if loss ensues.

Whenever property is stolen by burglars from an iron safe or other usual place of safe deposit, the administrator is not liable.

§ 412. A Trustee May Not Delegate His Authority

A trustee may not delegate his duties to another. It is his job and, while he may secure assistance or employ an agent where it is necessary, he is personally responsible if the things done are part of his own duties. If the things on which others are engaged are in the usual routine of business done by special agents, as legal work, banking, the sale of securities, or the like, a trustee is responsible only for securing responsible agents, lawyers of repute, bankers of established credit, and brokers of standing.

Whenever in the due course of business it is customary to act through agents or attorneys, a trustee should do so, and it is not treated as a delegation of his powers. Neither is it a delegation of power to instruct and authorize specific acts to be done. The standard in such cases is the care which "an ordinarily prudent man would exercise in the management of

[2] Hun v. Cary, 82 N. Y. 71.

his own property," and as such men usually employ agents to attend to ministerial duties, such as to collect their rents, so trustees have a right to employ such agents, and if they exercise ordinary care in the selection of such agents, they are not liable for the defalcation of such agents.

Most particularly is a trustee held to the personal execution of anything left to his discretion. When, for instance, the amounts to be paid for the education and maintenance of a minor have been left to the discretion of a trustee, he is expected to decide the amount himself and not to leave it to anyone else.

§ 413. Trustee May Make No Profit for Himself

A trustee in the United States is entitled to reasonable compensation for his services, but otherwise he is not allowed to make any profit from the trust property for himself, directly or indirectly. The beneficiaries may be women, children, or others not skilled in business affairs. To bar temptation, the rule is absolute and without exception, that a trustee may not use his position as trustee for his own profit. If in any way a trustee receives any gain from his connection with the trust, the courts will invariably make him account for it and give the *cestui que trust* the benefit of it. If a trustee uses trust funds in any business or speculation of his own, he may be required to turn over every cent of profit, and if any loss results he will be required to make it all good.

In such a case the court said:

> When therefore he was elected president of the company by directors whose election he as trustee controlled and allowed them to vote him a large salary as such president, and also allowed them to authorize the payment to him of bills for the legal services which he rendered to the company, he subjected himself to the criticism of using the position that the ownership of the stock held by him in trust gave him to secure to himself this salary and legal employ-

> ment which resulted in personal advantage to himself. . . . Under such circumstances, we think the surrogate was amply justified in arriving at the conclusion that he did—that the interest of the trust required that the appellant should be removed as trustee.[3]

All persons who stand in a trust relation to others, as partners, guardians, directors of corporations, and agents, generally are subject to this general rule against using their positions for their private profit.

The measure of damages for a breach of trust is, at the option of the beneficiary, the amount actually lost by the breach, or the amount which the trustee has gained by the breach, and where several trustees are involved, each trustee is liable for the whole loss.[4]

§ 414. Trustees' Duty to Take Possession

It is the duty of trustees as soon as qualified to get possession of the trust property and take it into custody. Until the trustees take possession, no profits go to the beneficiaries, but the creator of the estate is entitled to them. Where the trust is created by will, the title of the trustee will relate back to the time of death unless the will provides that the trust estate shall begin later.

When the trust property consists of notes, bonds, and claims against other people, the obligors and those indebted should be notified. If this is not done, and one of the debtors without notice and in good faith pays the debt to the original creditor, he cannot be made to pay again. Any debts due the trust estate should be collected without delay. Any loss resulting from delay could be charged to the trustees who were responsible.

Where property is to be sold, trustees must use their dis-

[3] Matter of Hirsch, 116 App. Div. (N. Y.) 367.
[4] Proprietors v. Force's Executors, 72 N. J. Eq. 56.

cretion. If there is an expensive establishment that is not to be continued, it should be broken up with the least delay. The widow and family generally have a reasonable time allowed before they leave if it is to be closed up and sold. Because under English law this period was forty days, it was called the "widow's quarantine."

Stocks that are not to be retained are to be sold at the trustees' sound discretion. It is their duty to sell to the best advantage, and they are not required to hurry the sale. To sell within the year or even within the second year has been held to be proper and reasonable. Usually, stock should be sold within the year allowed for settling an estate.

Notes and personal obligations should not be allowed to remain outstanding unless protected by mortgages or other equally substantial securities.

If the trustee himself owes the estate, he must treat his debt as assets collected.

§ 415. Trust Property Must Be Kept Separate

The trust property, when it has been reduced to possession, must not be mingled with like property of the trustee or with like property of any third person. The effect of mingling trust property is as follows:

1. If any loss occurs, the trustee is responsible for any amount that is required to bring the trust fund up to its full amount.

2. The beneficiary may claim all of the mingled fund, and the trustee can claim only what he can identify.

3. If the fund or property is kept separate and with the same degree of care that an ordinarily prudent business man would use in handling his own funds, the trustee is not responsible for any loss that occurs.

§ 416. The Conversion of Trust Property

The creator of the trust should set out: (1) whether the trustee is to hold the particular property intact during the period of the trust, or (2) whether the trustee is positively to sell certain trust property and reinvest it, or (3) whether the trustee is to use his discretion as to any conversion or change.

Where the instructions are positive either way, the trustee's duties are simple and certain. Where it is left to the trustee's discretion, it is the duty of the trustee to do the best he can as a prudent man of business.

Directions are sometimes given that real estate is to be sold and the proceeds invested in personalty in order that it shall ultimately be distributed as personalty. In such case it is sold as soon as it can be advantageously disposed of. This is one of the certain cases mentioned in (2) above.

> The cases upon the subject in the English and American courts are very numerous. But the general rule is recognized in all of them, that where it unequivocally appears from the will that the intention of the testator was to convert real estate into personal estate, the law will consider the conversion as actually made at the death of the testator, and treat the estate as personal for all purposes to which the intention of the testator clearly extends.[5]

In many wills, positive directions are not given and the trustees or the court must infer from the construction of the instrument what courses will most nearly conform to the purpose of the testator.

A court of equity may order a trust property converted from personal to real property, or vice versa, where it can be shown that it is for the interest of the beneficiary, and where the will does not in terms forbid such change.[6]

[5] Hammond v. Putnam, 110 Mass. 232.
[6] Perry on Trusts, § 449.

Where property is to be held for the benefit of one or more in succession and is of such a nature that it grows less valuable, or where the course of use and the lapse of time will make the final estate of diminished value, a court would imply an intention that the original property should be sold to the best advantage and the proceeds invested in what are ranked as "safe investments" in the particular state. (Funds must not be invested outside of the state.) By doing this the beneficiaries have an equal return each year, and whoever takes the remainder or final estate receives it undiminished.

§ 417. The Law as to Making Investments of Trust Funds

There are certain general rules applicable to investments of trust funds made by trustees:

1. Any specific directions in the will or other instrument creating the trust, as to the investments to be made or retained, must be followed exactly as to time, manner, and kind of investment.

2. If there are no directions, the rules of court or any state laws or statutes on the subject would govern so far as they go, and where these do not exist or do not apply, the trustees are expected to use good faith and sound discretion.

An investment by a trustee should be first of all a permanent, safe investment, and the question of income comes second. In no case should the investment be speculative.

The usual rules of investment for trustees prescribe: (1) government or state securities, and (2) bonds and mortgages on unencumbered real estate.

In some states the statutes extend these limits.

Investments may not be made beyond the jurisdiction of the court having charge of the trust. If such investment is made, the trustee is responsible for any loss.

Trustees are never justified in loaning money on personal security unless the trust instrument expressly authorizes such

risk. Any such loan would make the trustee personally liable for any resulting loss.

Unless by express directions, a trustee cannot employ the trust funds in any business or manufacture. If a trustee does this he is liable for any loss, and if there are profits he will be compelled to turn them all over to the *cestui que trust.* The same rule applies if trustees continue the business of the testator instead of closing it up with the least delay. When all the beneficiaries are capable of consent and all do consent to the continued conduct of a business, the trustee will not be required to make good losses.

> We concede that under the terms of the will the trustees were given a discretion as to the character of the investments they might make, and that they were not limited to the investments required by a court of equity in the absence of any directions from the testator. The trusts of this will are to provide the testator's children with incomes during their lives and on their deaths the principal is to go to their issue. The very object of the creation of the trust, was, therefore, the security of the principal, otherwise the testator might better have given the property outright to his children who were the primary objects of his bounty. The range of so-called "legal securities" for the investment of trust funds is so narrow in this State that a testator may well be disposed to grant to his executor or trustees greater liberty in placing the funds of the estate. But such a discretion in the absence of words in the will giving greater authority should not be held to authorize investment of the fund in new, speculative, or hazardous ventures. If the trustees had invested in the stock of a railroad, manufacturing, banking or even business corporation, which, by its successful conduct for a long period of time, had achieved a standing in commercial circles and acquired the confidence of investors, their conduct would have been justified, although the investment proved unfortunate. But the distinction between such an investment and the one before us is very marked. Surely there is a mean between a government bond and the stock of an Alaskan gold mine, and the fact that a trustee

is not limited to the one does not authorize him to invest in the other.[7]

In Massachusetts and some other states a certain latitude has prevailed, and trustees may buy the stocks of banks and manufacturing and insurance corporations.[8]

In mortgage loans, the loan should in no case be greater than two-thirds of the valuation, and in some cases the mortgage should not exceed 50 per cent of the valuation.

In each state the local law and usage should be ascertained and in case of doubt the court should direct.

§ 418. The Trustees' Control of the Property

In the usual trust the trustees are entitled to the possession of the property and the legal title is in the trustees. As the legal owners, they can sue and be sued. If the property were corporate stocks, the trustee would attend meetings, and vote, and could be elected a director of the company. He would pay all taxes.

It would be the duty of a trustee to hold both real and personal property in his name as trustee and all deeds, bonds, mortgages, stock certificates, and other evidences of value, should be kept as careful men of business keep their papers, in a secure safe, or in a safety deposit box.

If the trust involves the care of real estate, houses, stores, or farms, these should be cared for and looked after as careful business men look after such property of their own, in many cases by the selection of prudent and trustworthy agents or managers skilled in the particular line.

§ 419. Trustee's Duty to Make an Income

It is the duty of a trustee to make a safe income for the beneficiary. If he delays unreasonably to do this, he may be

[7] Matter of Hall, 164 N. Y. 199.
[8] Hunt Appellant, 141 Mass. 516.

charged with interest. It is not clear how much dilatoriness will be tolerated. A year has been allowed and an executor must still be allowed that period. It is doubtful if a present-day court would in any case let a trustee be so slack. The supreme court made a trustee pay interest for all the time that the fund was idle in excess of three months. That period would probably be the usual rule as to principal. Accruals from rent, dividends, etc., could not be invested so readily and more time would be allowed.

Usually in cases of this kind, the trustee is charged simple interest at the legal rate, and more if he had used the fund for his own purpose and had made more. He is not to profit from his dealings with the trust fund.

In a few cases compound interest is charged. If a trustee were directed to accumulate income and failed to make the investment, he might be charged compound interest. It is rarely, however, that more than simple interest is charged.

Review Questions

1. What is the duty of a trustee? If he gives the trust property the same care and attention as he gives his own, will it be satisfactory? How should he care for funds?
2. May a trustee delegate his duties to another? When may he act through agents? What is his duty in this particular? What things must he decide himself?
3. What is the rule as to the trustee making a personal profit from the trust? In case a trustee did use his position for personal profit, what would be the penalty? If several trustees are concerned, what is the rule?
4. What is the first duty of trustees? What should be done when the trust property consists of claims against others? What should be done by an executor? What is a trustee's duty as to selling property?
5. Why must trust property be kept separate? If the trustee mingles trust property with his own, what is the effect?

6. What should the creator of the trust positively specify? What is the rule as to converting real into personal property? What is done when the will is not clear? What powers has a court of equity? What should be done when trust property is depreciating?
7. What is the rule where specific directions are given? What is the rule when there are no directions? What are the usual rules for trustees' investments? What is the rule as to investments out of the state? As to personal loans? As to using funds in business? What effect has unanimous consent of beneficiaries to a violation of the rules?
8. In Massachusetts, what is the rule? In mortgage loans, what is the rule?
9. What right would a trustee have as to stocks? In whose name should property be held and business transacted? How should valuable instruments be kept? How should real estate be cared for?
10. What is the trustee's duty as to making income? If he is dilatory what is the penalty? When may compound interest be charged?

CHAPTER XLVIII

RIGHTS OF BENEFICIARY

§ 420. Right to Information and Accounting

It should be understood by both trustee and beneficiary that all papers, records, and data, bearing on the trust, the trust property, and the income therefrom, are to be kept by the trustee, and that the beneficiary has the right at any reasonable time to inspect, look over, and take copies of any of these data. The beneficiary also has the right to have his attorney or his accountant examine, inspect, and make copies of them.

Further, "a trustee or an executor is bound to keep clear, distinct and accurate accounts. If he does not, all presumptions are against him, and all obscurities and doubts are to be taken adversely to him." [1]

If the trustee enters such accounts in his private books, he will nevertheless have to produce these books; and the same holds good even if he has entered the accounts in the books of a firm of which he is a partner.

Much feeling arises at times in the settlement of estates and the administration of trusts, because the legatees or *cestuis que trust* do not understand the situation or the necessary limitations under which executors and trustees work, and it is worth taking some considerable trouble and pains to make the whole business intelligible to them and to make such reports and statements as are made, understandable by those most concerned. When the beneficiaries evidently misunderstand, they should be encouraged to get the aid of a professional

[1] Perry on Trusts, § 821.

accountant or an attorney or some capable business friend, to look into the whole matter and see that it is all straight.

In all trust relations, the beneficiary may have an accounting ordered where there is any reason for suspicion or any failure to allow inspection or to make satisfactory reports and statement.

In all cases where there are trust relations, a court of equity will, wherever it seems advisable, order an accounting, going back as far as may be necessary to show all the dealings with the trust property. The only difficulty in such case is the expense and trouble incident to the procedure.

§ 421. Right to Restrain Injurious Action

The *cestui que trust* may have an injunction issued to restrain the trustee from proceeding with any unauthorized action, if such action will result in irremediable damage. A court of equity will, in a proper case, issue such restraining order as the particular situation demands. In a case requiring such action, stockholders may restrain directors from taking unlawful action.

§ 422. Right to Have Trustees Removed

A *cestui que trust* has the right to have the trust property managed by honest, capable trustees, and if a trustee is not capable, or refuses to act, or deals with the trust fund for his own benefit, or fails to pay over the income as directed, or becomes interested adversely to the beneficiary, or if there is any other good cause for change, a bill or petition for his removal and the appointment of another will be received and acted upon if the case against the trustee is proved. This is a regular court proceeding, and the offending trustee must be duly notified and have the opportunity to file an answer and to be heard in opposition, which means that a formal trial must be had. If there is danger that the trust property will

not be properly handled pending the trial, the court will appoint a receiver.

It is to be noted that proceedings of this kind are not simple and should be undertaken only on advice and under the direction of capable and conscientious counsel.

§ 423. Right to Follow the Trust Fund

The *cestui que trust* can follow the trust property and have it subjected to the trust, unless it comes into the hands of an innocent holder for value. This is true also as to property substituted for the original property. As long as the fund can be traced, a court of equity will hold it for the benefit of the original *cestui que trust*. The right depends: (1) on the tracing of the trust property or money received for it, and (2) on the party in possession having a knowledge of the trust when he bought it. It is not a case that occurs often, and when it does occur, the aid of counsel will assuredly be required. (See § 416.)

§ 424. Remedy Against Trustee

If the trust property has been made away with and cannot be traced, or if when traced it is found to be in the hands of an innocent holder for value, the *cestui que trust* may then bring an action directly against the trustee. In any case he may do this, for the trustee is always responsible for the damage caused by any breach of trust. As courts of equity always have cognizance of all matters relating to trusts, such a suit would be brought in a court of equity, because the remedies are more effective than the simple judgment for damages given by a court of law. For instance, if the trustee had sold trust real estate to an innocent purchaser for value, a court of law could give judgment only for a sum of money, while a court of equity may: (1) compel the trustee to purchase other lands, or (2) allow the *cestui que trust* to take the proceeds

of the sale with interest, or (3) give judgment simply for damages.

As a general rule, a trustee cannot protect himself, following a breach of trust, by showing that with diligence and due care a *cestui que trust* could have protected himself or prevented the loss or damage; but, in the case where the trustee has failed to bring suit when he should and the *cestui que trust* has already had the trustee removed because of this, and there is still time to start a suit, the trustee may use this as a partial defense against any later suit brought against him by the *cestui que trust*. The reason that such evidence is admissible is because it shows that any loss on the part of the *cestui que trust* was not entirely due to the trustee's negligence, but due in part to the carelessness of the *cestui que trust*.

Review Questions

1. What rights of inspection has the beneficiary? What is the duty of the trustee as to records? May a beneficiary have the aid of an accountant or attorney in examining accounts?
2. When may a beneficiary have an injunction issued?
3. For what causes may a trustee be removed? Is this a simple matter?
4. If the trustee makes away with trust property, what remedy has the *cestui que trust*? On what does the right to trace the property depend?
5. Is the trustee liable to action for making away with trust property? In what court? What remedy can be secured?

CHAPTER XLIX

POWERS OF TRUSTEES

§ 425. Classification of Powers

Trustees have certain general powers by virtue of their offices. Every trustee has these general powers unless the instrument creating the trust in some way limits them. They are inherent in the office of trustee and may be limited by the declaration of trust.

If the instrument creating the trust gave other powers, these would be special powers. Special powers are either mandatory or discretionary. Mandatory powers are positive and must be carried into effective action. Discretionary powers are left to the judgment of the trustee as to whether or not they are to be exercised.

> The rights and powers of a trustee properly qualified and appointed are derived from and measured and limited by, the instrument creating the trust, and usually include not only general authority to possess, manage and preserve the trust property, and to execute this trust, by distributing the property and funds among the *cestui que trust*, but specific authority to sell, mortgage, lease and pledge the trust property and to invest the trust funds, as well as authority to institute and defend actions for the benefit of the trust and to incur reasonable expenses in administering and executing the trust.[1]

§ 426. General Powers

The general powers of all persons who are appointed trustees are as follows:

[1] 39 Cyc. 290.

1. To take possession of and hold the trust property.
2. To invest trust funds so as to yield a fair income.
3. To sell and re-invest when it is necessary.
4. To sell and convey real estate when necessary to carry out the provisions of the trust.
5. To release real estate so that it may earn income.
6. To repair and pay taxes on trust property.
7. To sue or defend suits when necessary.
8. To contract so far as may be necessary to carry out the purposes of the trust.
9. To pay over and distribute the trust property to those entitled to it.

The enumerated powers include all incidental powers necessary effectively to exercise the powers named. For instance, to take possession may require suit to be brought, counsel to be employed, and, possibly, compromises to be agreed to. If property is leased, the income must be collected and applied.

In all cases of doubt as to what the law is, and what the conduct of trustees ought to be under it, they are entitled to instruction and direction from the court.[2]

§ 427. Mandatory Powers

Powers are mandatory or imperative when they must be exercised positively within a reasonable time or at a given time or when some contingency happens.

Imperative powers may be:

1. To sell real estate or other property.
2. To pay over income.
3. To pay over principal.
4. To transfer property.
5. To distribute property.

[2] Perry on Trusts, § 476.

The contingencies on which action is to be taken may be generally as follows:

1. To sell real estate or other property when some person or persons die or come of age or marry.
2. To pay over income or principal if a certain person marries in a specified manner.
3. To pay over principal when or as minors come of age.
4. To make certain payments if sickness or accidents or misfortunes come to certain beneficiaries.

§ 428. Discretionary Powers

If it is intended that any of the powers granted are to be discretionary, the intention must be shown by using words such as "in their discretion," "if in their judgment it seem best," "if said trustees shall approve," or "in such proportions as said trustees shall deem best." There are several cases where trustees exercise discretion, as follows:

1. The discretionary powers may extend to giving or withholding the gift, legacy, or other interest. In such case it should be provided that the interest, if withheld, shall be bestowed elsewhere.

2. The discretion may be as to selecting from, or portioning among, a class. An example of this would be a bequest of a library "to be kept until all my nephews are of age and then given by said trustees to the one who in their judgment would most appreciate and make the best use of the same."

3. The discretion may be as to the sale or lease of real estate or securities. The following language would express this act of discretion: "Said trustees may in their discretion sell or lease any of said real estate, when in their judgment such action is expedient, and in event of such sale may re-invest the proceeds in first mortgages, or approved corporate and railroad securities." Such a discretion will be subject to the con-

trol of the court more closely than other classes of discretionary trusts.

4. The approval or consent of the trustees may be required to a marriage or the selection of a vocation or a plan of education. For example: "If any of my nephews or nieces should on reaching the age of eighteen desire to undertake any reasonable course of education or training, professional or otherwise, likely in the judgment of said trustees to fit them to lead useful lives, said trustees may pay their reasonable bills for tuition and board, for a period of four years, but such payments may be stopped at any time if in the judgment of said trustees the beneficiaries are not making good use of their opportunities."

In such cases the judgment of the trustees cannot be controlled by the court. If, though, they paid out money wastefully and to parties who were not entitled to consideration, the court would restrain them on application of some party in interest. The court would also intervene to prevent any action clearly beyond the discretionary powers granted.

A personal discretion does not, unless expressly authorized, pass to a delegated or substituted trustee.

§ 429. Power to Forbid Marriage

It is sometimes provided that a property is to be given to a *cestui que trust* upon marriage with the approval and consent of the trustee. In order to make such a restriction effective, there should be a gift over in event of the marriage taking place without such consent or approval. If the possible beneficiary marry without the consent of the trustee, he or she cannot claim the gift.

Most of the cases in which this power has been judicially considered are English cases, and it is not certain that American courts would follow them.

An American court of equity would certainly require a

trustee in any such case to exercise his power with the utmost good faith, and would relieve the *cestui que trust* if the trustee were arbitrary, unreasonable, or harsh.[8]

§ 430. Court's Control of Discretionary Powers

A court may interfere with the exercise of discretionary powers in the following cases:

1. Where the trustee failed to exercise discretion.
2. Where discretion was unfairly exercised.
3. Where discretion was not used in good faith to promote the end and purpose of the trust.
4. Where the trustee or his family benefited or gained by exercise of discretion.

Generally, courts will not interfere to compel a trustee to exercise a purely discretionary power. It is to be assumed that the creator of the discretionary trust intended the trustee and not a court, to judge what should be done. Nevertheless, if for any selfish, fraudulent, or improper purpose, the trustee refuses to act, the courts will give a remedy to the parties injured.

If he exercises his power in an unfair, dishonest, or capricious manner, the courts will give relief. It is necessarily impossible to be definite on this subject, and much would depend on the circumstances of the particular case.

Courts will not, without strong reason, disturb a discretionary power, but if a trustee who was to apportion or give certain funds or property to one or more of a family of children, should die or refuse to select, the court would divide the property equally among all the possible beneficiaries.

In any case where a trustee exercises a discretionary power to profit himself or his family, the courts would interfere to prevent or correct the wrong.

[8] Perry on Trusts, § 519.

If discretionary powers are exercised in good faith, the court will not interfere. The courts will intervene only when the trustees act capriciously or dishonestly. The courts will not substitute their discretion for the discretion of the trustees unless it appears that the trustees have abused, or are likely to abuse, their discretion. If a trustee refuses to consent to a sale or a marriage, from arbitrary or interested motives, the courts may be asked to compel him to assent.

§ 431. How Powers Are to Be Exercised

All powers must be exercised by trustees in good faith and with the care and diligence which an ordinarily prudent man would use in the management of his own affairs. His general powers may be limited by the instrument creating the trust, and if he has any special powers, they are expressed in the instrument. The intent of the testator or creator of the trust is to be gathered from the instrument, and named powers carry with them all incidental powers necessary to make the main objects effective. A trustee has power to take possession of the property and to collect all claims. To do this he has the right to bring suit, to employ counsel, and to compromise if compromise is advisable. A trustee has power to care for and manage the trust property. This includes power to lease if advisable, power to pay taxes, and to make needed repairs. In a necessary case he would have power to mortgage. If there are funds to invest, the trustee must buy such securities as the will or declaration of trust authorizes or such as are allowed by the state law or the orders of the court. If any securities held depreciate, he must sell and reinvest. If a trustee made a sale without good reason and loss resulted, he would be held responsible.

If a will directed the conduct of a business for a certain time, the trustee would have authority to make all contracts necessary to the conduct of the business.

Review Questions

1. Distinguish between general and special powers of trustees. Distinguish between mandatory and discretionary powers.
2. What are the general powers of all trustees? How may any of these powers be limited?
3. What are the usual mandatory powers? What are the usual contingencies on which imperative action is to be taken?
4. What are the usual phrases indicating discretionary powers? If discretion as to making a gift were exercised adversely, where would the gift go? What exercise of discretion do the courts supervise most closely? In what cases has the court no control?
5. If the consent of a trustee were required to a marriage, how could it be made effective?
6. Where may a court interfere with the exercise of a trustee's discretion?
7. How should a trustee exercise his powers? What incidental powers would a trustee have?

CHAPTER L

A TRUSTEE'S LIABILITIES

§ 432. General Liability of Trustees

A trustee is liable to the *cestui que trust* for any damage arising from the trustee's bad faith or negligence. These may be summarized as follows:

1. Liability for damage from positive bad faith:
   - (a) Embezzlement
   - (b) Mingling trust funds with his own funds
   - (c) Investing in unsafe securities
   - (d) Investing trust funds in his own business
   - (e) Refusing to pay over trust funds to those entitled to them
2. Liability for negligence:
   - (a) Leaving funds idle
   - (b) Failing to change investments when they become unsafe
   - (c) Not keeping trust property safe

A trustee is held to the usual practice of a careful, prudent business man. When he comes short of this, by reason either of bad faith or of carelessness, he becomes liable for any resulting loss or damage.

If he leaves the funds idle, he may be made to pay the interest or income that otherwise might have been earned. (See § 411.)

§ 433. Breach of Trust

A breach of trust is any act or omission of a trustee that violates his duty to care for the trust funds or to pay over the

income or the principal to the beneficiaries. It is used loosely to designate anything from arrant knavery and theft to lack of care in selling securities that were depreciating.

If a trustee embezzles the trust funds, it is a breach of trust and is also a criminal offense. If he leaves the trust funds to a partnership of which he is a member, it is a breach of trust and he is liable for any damage, but it is not a criminal offense. If a trustee having discretion as to payments refuses, without adequate reason, to make payments at all, it is a breach of trust. If he does not make sure that his co-trustee deposits receipts and loss ensues, it is a breach. A trustee is liable to the beneficiary for all loss resulting from the trustee's breach of trust.

§ 434. Making Bad Investments

It is the duty of trustees to invest trust funds according to the directions of the trust instrument, if there is any, or to the statutes or rules or orders of court, or, failing these, they must invest in good faith and with sound discretion. When trustees depart from these general rules and loss ensues, they are liable to make the losses good. (See § 435.)

There are a good many rules as to investments a trustee should not make:

1. He should not invest funds beyond the jurisdiction of the court.

2. He must not invest in personal securities.

3. He must not invest in trade, business, manufactories, or any speculative enterprises.

4. He must not invest in new and experimental enterprises.

5. He must not loan money on second mortgages.

6. He should not invest in first mortgages in excess of 50 to 60 per cent of the value of the property.

7. He should diversify his investments and not put too much into any one security.

8. He should change investments only to guard against depreciation, or to change unprofitable securities into profitable ones or unlawful enterprises into those legally proper.

Generally, trustees must exercise the care and prudence of a reasonable man. They must investigate as to the safety of investments and must thereafter watch, and, if any investments become unsafe, must sell them forthwith.

§ 435. Negligence in Investing Funds

A trustee is liable not only for positive mismanagement, such as investments in speculative securities or in some ordinary business, or for a breach of trust, as where he lends trust funds to a friend or uses them in his own business, but he is also liable when loss occurs on account of his failure to use the prudence that a careful business man would use in handling his own funds.

If a trustee is negligent and fails to invest the principal, or if a fund is to accumulate and he fails to collect the income when due or to invest the income as soon as it is sufficient in amount, he is liable to the *cestui que trust* for the loss of interest or income caused by his negligence.

Executors have been allowed to leave funds in a bank for a year after the death of the testator, but this is not a general rule. They should proceed with reasonable diligence in each case. Three months has been held a reasonable time.

Trustees and guardians are held more strictly to account for interest than executors, for it is supposed that they take funds ready for investment and do not have to collect them as a preliminary.

The consequence of mismanagement or failure to exercise due care is a liability for all resulting loss or damage. If the trustee has given bond, he and his sureties are both liable, and his surety will have a claim against the trustee for whatever amount the surety has to pay.

The liability in case of negligence is only for the amount of interest lost by reason of the delay in making the investments.

§ 436. Theft or Robbery

A trustee is not responsible for thefts or robbery by a stranger if he has taken all the precautions that a careful business man takes in guarding his own property. Neither is he held responsible for thefts and embezzlements by agents, brokers, or attorneys, where he is justified in acting through others and in placing the funds in their hands and has exercised proper care in their selection. In case the trustee puts the funds into the hands of others when it is not necessary, he is responsible if anything is lost by theft or robbery.

In any case under this head the liability would be for the entire amount lost.

§ 437. Accident

A trustee is not responsible for a loss by accident if he is acting strictly in the line of his duty. The loss will be that of the beneficiary. If, however, he has departed from the rules laid down for trustees in caring for trust property, and some accident or disaster occurs and the property is injured or destroyed, he will have to make it good.

If it were a case where the property should have been insured and the trustee had neglected to insure, he would be liable.

§ 438. Fault of Co-trustee

The general rule is that a trustee is not liable for losses caused by the default or negligence of a co-trustee, unless he has co-operated with the trustee who is at fault, or has known of his misconduct and has not taken any steps to prevent. If the matter was one in which each trustee should

have interested himself, no one would be guiltless even though he did nothing himself. A trustee is not a surety, however, for his co-trustee, and in any case the question of liability will depend on all the circumstances. If one trustee were to take charge of the funds for investment, it would be the duty of his co-trustee to see that the proper investment was made.

In all these cases the question is: Has the trustee employed such prudence and diligence in the discharge of his duties as, in general, men of average prudence and discretion would, under like circumstances, employ in their own affairs?

Where several trustees are concerned in the management of a trust, it is usual to apportion the duties, and in such case, where there is nothing to cause suspicion there is no liability for one another's defaults. Where the trust funds are in the hands of one trustee for a proper business purpose, the others are not responsible for his misconduct. This would not hold if the funds were held by the defaulting trustee longer than the circumstances justified, or if the defaulting trustee were of bad character and credit, or if the matters were not looked after by the other trustees and the facts ascertained. In such cases or in any case where the trustee who committed a breach of trust was enabled to do so by the negligence, ignorance, or acquiescence of a fellow trustee, both would be liable to the beneficiary.

Executors can act separately in regard to the trust property, but trustees should all act together. If co-trustees cannot agree on any necessary action, they must apply to the court for instructions. For instance, if suit were brought affecting the trust property it would be necessary for all the trustees to employ the same counsel in order that they might defend together. If they did not do this and extra cost resulted, they might be compelled to pay personally. All trustees must join in transferring securities, conveying or mort-

gaging real estate, or pledging the trust property. A bank deposit should be in the name of all the trustees, and when for convenience one is permitted to check out on his sole signature, all will be liable for any resulting loss.

§ 439. Mingling Trust Funds

When a trustee mixes trust property with his own, the beneficiary may take the whole, leaving the trustee to prove his own part. A court of equity will try to trace a trust fund and, if it can be followed, it will be held to the purposes of the trust unless the rights of innocent third parties are affected. As between the *cestui que trust* and the trustee, and all persons claiming under the trustee (otherwise than by purchase for a valuable consideration without notice), all property belonging to a trust, however it may be changed or altered in its character, and all the fruits of such property, whether in its original or altered state, continue to be subject to and affected by the trust.

Interest will be charged against a trustee who has mingled trust funds with his own, and annual rests may be taken and the interest accumulated added to the principal.

Where the trustee mixes the trust fund in his own bank account, if he is insolvent the *cestui que trust* will have to take his chance with all other creditors. If the trustee is not insolvent, the *cestui que trust* may take whatever has not been withdrawn. Practically, it is not easy to track trust funds, and when the trustee is insolvent and has used the trust funds with his own, they cannot usually be identified and the *cestui que trust* fares no better than any other creditor. Where it can be shown that the trust funds have been used to buy certain definite property or securities, these can be held as affected by the trust, and creditors have no claim upon them.

Review Questions

1. For what is a trustee liable? What things are bad faith? What things constitute negligence?
2. What is understood by breach of trust? Give an example.
3. What is the first authority on a trustee's investments? The second? What are some of the negative rules?
4. Is the trustee liable if he leaves money at low interest in a savings bank?
5. What would be the liability for failure to make any investment?
6. When is a trustee not liable for theft or robbery?
7. Is a trustee liable for loss by accident? If he should have carried insurance and did not, would he be liable?
8. When is a trustee liable for the fault of his co-trustee? What is the test question in all cases? How can executors act? How should trustees act? How should bank deposits be made?
9. What is the situation when a trustee mixes trust property with his own? To what extent can trust funds be followed?

CHAPTER LI

TRUSTEES FOR MARRIED WOMEN

§ 440. The Common Law and Married Women's Rights

The common law had no care for the rights of married women; or, rather, under the common law a married woman had no rights worth consideration. When a woman married, her husband was at once entitled to all rents, income, and profit from her real estate. All her personal property was his absolutely, to dispose of at his pleasure. Any part of his wife's property that was in the shape of a right of action could be sued on by the husband, and whatever he recovered was his. If he was insolvent, his creditors could take his wife's personal property the day of the marriage and bring suit on her rights of action and apply all the property recovered on his old debts.

At common law, a husband became entitled to receive the rents and profits of his wife's real estate during their joint lives, and he became entitled to all her personal property in possession, and to all her choses in action if he reduced them to possession during his life. If he did not reduce them to possession, and survived her, he was entitled to be her administrator, and he thus took all her choses in action. He also was entitled to all her chattels real, and had full power to sell and convey them. But if the husband died without having aliened her chattels real, or without having reduced her choses in action to possession, she, as survivor, continued to hold them as if she had never been married. The principle was this: by the marriage the husband became bound to pay all debts due from the wife before marriage; he also became bound to support and maintain the wife and her children in a proper manner. In consideration of these obli-

gations, and to enable him to perform these duties, the law gave him the property of the wife as stated.[1]

It is gratifying to know that there was a "principle" in the matter and that it was not merely because the male of the species was the lawmaker.

§ 441. The Common Law and Trust Estates

If a married woman were the *cestui que trust* of a trust estate, or if a woman who was the *cestui que trust* contracted marriage, the common law gave her husband the right to take whatever the trustee would have had to pay her. That is, under the common law a husband had the same right to his wife's equitable estate that he had to her legal estate, and her rights were as completely abrogated in the one case as in the other. The whole proceeding was so repugnant to every sense of fairness and justice that the courts of equity tried to find some way to evade it. The simplest way would have been to change it by positive legislation—an act of Parliament—giving a married woman the same control over her property that a married man had, but to do this would have been openly to admit that the common law was wrong and that the fathers had been unjust and inequitable for many years, which Englishmen—and other men as well—are always loath to do. Therefore, relief had to come first indirectly, through courts of equity.

§ 442. Marriage Settlements

The doctrine of marriage settlements was an invention of the English courts of equity to mitigate the injustice of the common law in its dealings with the property of married women. When the wife was the *cestui que trust* and the trustee declined to pay over to the husband what the wife was entitled to, the husband had to come into a court of equity to compel the trustee to pay him his wife's money. In such

[1] Perry on Trusts, § 625.

a case the court on the maxim that "He who seeks equity must do equity," would order that a proper settlement should be made the wife, from her own equitable property, before any part was paid to the husband. It was said that a wife and her children had an equitable right to a settlement; that is, the courts of equity said so, and whenever the question came under their jurisdiction they enforced the doctrine.

A settlement is a provision made for a wife and her children, that cannot be taken by either her husband or his creditors.

In connection with this doctrine of settlement, much curious equitable law developed. A husband could make a settlement on the wife himself, and when the parties to the marriage were of influential families, this matter of settlement was always carefully handled by the bride's family. Equity recognized and enforced these antenuptial contracts if a reasonable provision was made for the wife in lieu of what she gave up.

It was only one step further to decide that anyone who had property had the right to give and settle it on a married woman to her sole and separate use, free from the interference and control of her husband. This made it possible for any relative or friend to provide an independent property or income secure to a married woman, and safe from her husband and his creditors.

§ 443. Creating a Wife's Separate Estate

A marriage settlement of this kind may be made without any express trustee, or if it is necessary to have a nominal trustee, the husband shall be held to take the legal trustee's title, and may be compelled to act in that capacity.

A marriage settlement is peculiar in this respect, that restraint on alienation and against anticipation of income will be sanctioned by courts of equity.

No special form is necessary to create such a married woman's trust, but the intention to exclude the husband from control or benefit must be clear and beyond doubt. "For her sole and separate use" is sufficient in any case to bar the husband's right.

If property is conveyed to a single woman "for her sole and separate use," she will have the same control of it as any other owner until she marries, when the limitation will take place, and she cannot sell it while she is married nor can it be taken for her debts.

Apart from this, a married woman may deal with her separate property as if she were single. If personal property is given to the separate use of a married woman, she may sell or otherwise dispose of it. This is probably now the rule in all the states. If the instrument of settlement prescribes any limitations on her power of dealing with the property, she can deal in no other way.

§ 444. The Modern View

Most of what has been written in this chapter is now practically obsolete law. The statutes of nearly, if not all, of the states now provide that any property, real or personal, owned by a woman at marriage or which shall come to her after marriage by gift, bequest, or devise, or which she may acquire by her own services or abilities, shall be her own separate property, which she can own, control, and deal with, as her husband deals with his own property or earnings.

The passage of these acts does not interfere with any other settlement made before the passage of the acts. It would also be possible to arrange a settlement on the old plan if it were desired by a married woman. In some states there are statutory provisions that allow the appointment of trustees to hold a married woman's separate property if she so desires. Practically, though, the statutes have done away with

the old method of making settlements on married women, and laws relating to it are for the most part already obsolete.

If at the present time it is expedient to create a trust estate for a married woman or to provide a regular income for a single woman who may marry, such a trust is created as it would be constructed for any individual, and the duties of the trustee under such a trust would be neither more nor less than for any other *cestui que trust.*

Review Questions

1. What rights did a married woman have at common law?
2. At common law, could a husband take possession of her benefits from a trust estate?
3. How did the courts of equity try to remedy the situation? At this period, if a trustee voluntarily paid the trust income to the husband, could it be helped? What is a settlement? What was the next step in making the situation better?
4. Did a marriage settlement require a named trustee? What was its essential feature?
5. In this country, what is the usual law at this time? How are trusts usually created for married women?

CHAPTER LII

GUARDIANS FOR INFANTS

§ 445. Orphans' Courts

When property belonging to an infant needs the care and custody of someone of more mature years, the court, which in this country is that one which has special charge of both the person and the property of minors and is called variously the "court of probate," the "surrogate's court" and the "orphans' court," will appoint a guardian of the infant's property, who is a trustee in the strictest sense of the term. The place of residence of the minor determines what court has jurisdiction to appoint a guardian. The peculiar function of such courts is the care of orphans and minors whose natural guardians cannot or do not provide for them. It is unlawful for any person not authorized by such a court to interfere with the person or the property of such a minor. Where a guardian is appointed by will, the appointment must be approved by the court before the guardian can act. Where property is placed in trust for the benefit of a minor, any abuse of authority or negligence in execution by the trustee can be corrected by the court, or the trustee may be removed and another appointed to fill the vacancy.

The court can enforce its authority and directions by contempt proceedings against the offending party.

§ 446. Maintenance and Education

In the case of orphans it is the duty of the guardian to see that they are cared for and educated, and the court will always direct the proper expenditure for this purpose. In fact, where there is need for the support of children whose father is dead,

the guardian might safely apply the income this way and trust to the court's approval later. If the father is alive, it is his duty to care for his children, and while the income of property belonging to the children could be used in case of his inability to support them, that inability would have to be proved, otherwise the father would be the beneficiary and not the children. If the property belonging to the children is considerable and the father could not of his own means give them the education and training they should have properly to fill the position they would probably occupy, the court would direct an allowance to help the father.

A mother will nearly always be allowed maintenance for her children out of the income of any property they may have. The amount would be fixed by the court.

There are cases where property is left for the maintenance and education of the children with the intention of helping the father give the children a better education and training than he can afford. In such cases the instrument should expressly state that such is the intention.

The trustee is accountable for the proper application of money allowed for maintenance and education. If the father misapplies money paid to him, the guardian must exercise his discretion and make some other arrangement. It is his duty as guardian to see that the income is properly applied and is not wasted or misapplied.

§ 447. Using the Principal

Where it is possible, only the income of a minor's property should be used for his maintenance and education. Where this is not possible, the court will allow a trustee to trench upon the principal. In no case should a trustee do this without permission of the court. The court alone has power and will exercise it when it is strictly necessary.

A court would more willingly direct the expenditure of

principal for education and training for some business or profession, than merely for maintenance. To expend principal in preparation for life is considered by the courts as being really a form of investment and as merely changing the capital into another and probably more desirable shape.

If several children were interested in the fund or if the principal were to go to someone else after the minor had had the use of the income, it might render it impossible for the court to make such an order. In no case should a trustee act without authority from the court in charge.

§ 448. Investments of Principal

All the general rules as to the investment of trust funds to insure their safety, hold good in regard to a guardian's investments. The object is always safety first, and speculative and private business enterprises are barred. In those states where the laws prescribe certain investments for savings banks, the courts often direct guardians to invest in similar securities. If the trust were created by deed or will, any specific directions as to investments would control.

A guardian would not be justified in making investments that would change personalty into real estate, or vice versa. No sale of real estate would be legal without court authority. No title could be given by an unauthorized sale. In most of the states the laws prescribe the procedure to secure an order for sale of a minor's real estate, and in such cases the statutes must be followed. Cases arise at times where it is necessary that property of minors should be sold, and then recourse must be had to the court having jurisdiction.

§ 449. Payments by Guardian

The guardian is under bond for the faithful discharge of his duty. A guardian duly appointed is authorized to collect moneys due and to take possession of all property belonging

to the minor. His receipt is a sufficient discharge to those paying him money or turning over property to him. In reducing the minor's estate to possession, he has the usual authority of any trustee.

It is in paying out what he has received, that the guardian must exercise his discretion. If money is to be paid to a minor, the guardian cannot safely pay it to the minor nor to anyone for him, unless he is authorized so to do by the court. If he does so, he may be compelled to pay the amount again when the infant comes of age. A receipt from a minor is of no legal effect.

In any case where the will or other instrument creating the trust directs the method of payment, the trustee may safely follow orders.

In some cases, where the amounts coming to children are small, courts of probate simply direct that they be paid direct to those having the care of the children in order to save the formality and expense of appointing a guardian of the property.[1]

Where a ward lives with his guardian as a member of his family, there is usually no obligation for board, and on the part of the ward, no claim for any services rendered. In some states, under such circumstances it is held that the guardian has a claim for maintenance.

Review Questions

1. When does a minor require a guardian? What court appoints? If a guardian were named in a will, would the court have authority? Why is a guardian bonded?
2. If the father were dead, what duty would devolve on the guardian? If the father were living, should the guardian of the child's property pay for support of the child? If the father could not

[1] Perry on Trusts, § 624.

give the children proper education, what could be done? If it is intended that property should be used to help a parent bring up children, how should it be arranged? What responsibility has the trustee in regard to expenditures for maintenance and education?

3. When should the principal of a minor's property be used for his maintenance and training? Has a guardian or trustee authority to do this? What is the attitude of courts in this matter? Would it affect the action of the court if several children were interested or if the principal was to go elsewhere?
4. What are the rules as to investments by guardians? Can a guardian change real estate into personalty? Can a guardian sell real estate of his ward at his discretion?
5. What is a guardian's first duty? What caution must he observe in paying out money? What may courts do when amounts involved are small? Where a ward lives with the family of his guardian, is the guardian entitled to charge board? Must he pay his ward for any services rendered?

CHAPTER LIII

TRUSTEES FOR INSTITUTIONS

§ 450. Management of Corporate Bodies

Any business enterprise in the corporate form is managed by a board of directors, who exercise the functions of trustees and in some cases are called "trustees."

Apart from these organizations established and managed primarily for profit, are a vast multitude of institutions and associations peculiar to our modern social organization, usually in some corporate form, in connection with which great properties are handled, immense funds are controlled, and vast sums expended. In all of these institutions boards of trustees have charge of affairs and direct the expenditures of income.

Some of these organizations are public, as are the educational, charitable, penal, and, in some cases, financial institutions controlled by the state and municipal governments.

Others are private and include:

1. The many universities, colleges, schools, and institutions of learning and training, and the great foundations, such as those that bear the names of Russell Sage, Carnegie, and Rockefeller.
2. The great multitude of charitable and philanthropic institutions, founded by private means and controlled by independent boards, such as hospitals, homes, and asylums for the orphaned, the crippled, the aged, and the unfortunate.
3. The many clubs, societies, and associations for all manner of social purposes, in all of which property

is held and money is collected and expended by trustees, directors, or managers.

In all of these institutions those who control the property and manage the affairs exercise fiduciary functions, and are held to the duties and responsibilities of trustees.

§ 451. Management by Boards of Trustees

The management and control of corporate property and affairs rests entirely with the board of directors. This same rule extends to all sorts of associate bodies where those making up the membership are too numerous to act collectively. "Charities," taking the term in its broad sense, are managed in this way. Most public institutions are similarly handled. Libraries, lodges, churches, and associations of many kinds, have boards of trustees who manage and govern them.

Such boards can act only in regular or special meetings, notice of which has been duly given, and their action is expressed by actions and resolutions, adopted and recorded according to the usages of parliamentary law. Strictly, it is only in such lawful meetings with a quorum present that a board may act, and even the separate written assent of each member would not bind the corporation or other body represented by the board.

In corporations and in many other organizations, the board is elected annually by the stockholders or members of the organization. In stock corporations the vote is based on the number of shares held. In membership organizations each member has one vote. In public institutions and in many charitable organizations the trustees are appointed by some outside authority. In some charitable organizations, a vacancy is filled by vote of the remaining trustees. This makes what is called a "self-perpetuating" board, and may result in control by a clique of interested individuals.

§ 452. Powers of Members of Board

Usually members of such boards may resign at any time. A peremptory resignation, phrased "I hereby resign," ends the office immediately. A tentative resignation, phrased "I hereby tender my resignation," requires acceptance before it takes effect.

Directors or trustees have no power to suspend or remove a fellow member. It is difficult to remove a director unless some special law gives authority for his removal. The courts will, for sufficient cause, remove a trustee of a charity or public institution. In some states the statutes provide some method of removing trustees or directors who abuse their trust.

In a corporation the directors have full authority to do everything necessary to conduct the corporate business, save as limited by statute, charter, or by-laws. These powers, however, extend only to the purposes for which the corporation was formed. A board of directors could not sell the entire assets, dissolve the corporation, or make a radical change in the business. A director is practically a trustee for the stockholders and must exercise a trustee's care and good faith and may have no interest adverse to the interest of the corporation.[1]

Trustees of institutions, societies, and organizations of all kinds, are expected to give the care, attention, and diligence that prudent business men give to their own affairs. The characteristics of these various forms of trusteeships will be discussed briefly in the following sections.

§ 453. Trustees of Charities

A charitable trust is held to include trusts for philanthropic purposes and also trusts for educational and religious objects and all trusts for public convenience, use, or benefit. Under this head would come trustees for colleges and universities,

[1] Cook on Corporations, § 648.

churches, missionary societies, organizations such as the Y. M. C. A., the Red Cross, the W. C. T. U., the Child Welfare Association, and many others, including the great charitable foundations established by Carnegie, Rockefeller, and Mrs. Sage.

An indefinite or uncertain trust, or a trust without a beneficiary, if for a public or a charitable purpose will be sustained by the courts in most states, and will not be invalid because no trustee or beneficiary has been named. The same is true if there has been some error in defining who shall be the trustee or beneficiary, and it is possible from the context of the instrument or from certain incidents, to reach any conclusion as to whom the creator of the trust had in mind. As a rule, courts of equity will not allow a charitable gift to fail because there is no trustee, but will appoint a trustee to administer it or will do so themselves. The court will also take action of some sort where a trustee named by the creator of the trust is not in existence at the time the trust is effective, or where the trustee is unable or incapable of taking such office, or dies, is removed, or refuses to fill the office.

§ 454. Duration of a Charitable Trust

A trust of this nature is not within the rule applying to perpetuities, that is, with proper provisions it may continue for a period longer than "a life or lives in being and twenty-one years." As shown by the definition given, it is further distinguished from an ordinary trust by the fact that there is no specific beneficiary or beneficiaries named. A trust of this kind is called a "public trust," while the usual or ordinary trust is known as a "private trust."

§ 455. Trustees of Charitable Trusts

The person creating the trust may not only appoint the trustee he desires to carry out his trust, but may also set out

the method or manner in which their successors are to be chosen. When this is done, the method must be followed whenever it is at all possible. When this right has not been reserved, it is for the court to appoint the new trustees.

When a trust is created, and the trustee appointed resides in a foreign jurisdiction or country, in case of his death, disability, or refusal to act, the court will assume that the foreign court having jurisdiction of the trustee will appoint a trustee to fill the vacancy.

Where an unincorporated club or association is appointed trustee, the trust will fail because there is no one capable of taking the legal title, and if the court wishes to see the trust carried out, it will have to appoint a trustee itself. Any trustee so appointed by the court, however, must not be one opposed in interest to the beneficiaries of the trust.

Trustees of charitable trusts will be held to the usual duties and will be subject to the usual liabilities of trustees. They will be subject to any limitations or directions set forth in the will or other instrument creating the trust. Apart from this they will probably frame their own rules as to meetings and procedure. These will be supplemented by the usual parliamentary procedure applicable to all action by associated individuals.

§ 456. Trustees for Public Institutions

In every state and in every city there are many public institutions—libraries, hospitals, asylums, schools, and other social activities—the properties and businesses of which are managed and controlled by boards of trustees or managers with the functions of trustees. In such institutions the duties of trustees relate more to the conduct of the institution and the careful expending of its income than to the care of investments and the handling of trust property.

Such trustees are usually appointed, and they should be

men of character and standing in the community. Those most affected by any negligence on the part of these trustees are not usually in a position to complain or to institute any attempt to remedy any wrongs. If the negligence is very excessive, some newspapers may stir up an investigation, otherwise nothing is usually done. A board of trustees of a public institution is apt to be much wedded to routine, and the superintendents and managers who do the actual work usually give reports of the work that are assumed to be correct, and the trustees generally take only such action as is indicated to them.

In some states savings banks are not organized for private profit, and boards of trustees are appointed to manage solely in the interest of the depositors. In such cases they are held to the strict liability of bank directors and are answerable for neglect and lack of business prudence.

§ 457. Educational Institutions

In charitable gifts to educational institutions, the gift is valid even though expressing no specific territorial limit; or the gift may be confined to a certain class or condition of persons, as for example, a gift for educational purposes limited to "Quaker children."

Where the territorial limit to be benefited is stated, but is not absolutely correct or exact as to boundaries, as where a gift is made to a "town" or a "vicinity," if the true meaning of the creator of the trust is apparent, the trust will be carried into effect according to the intention.

The trustees of educational institutions should be men of character, intellect, and culture. Their most important duty will be the selection of the educational head. After that their duty will be to help him carry his policy into effect. Of late years, boards of trustees have in some cases assumed the right to exercise a certain censorship over the teaching staff, and, it is charged, have brought unfair pressure against the expres-

sion of opinions on the part of the professors. In some cases the duties of trustees are obscure, as where a man founded a college or endowed a chair to teach something in theology or economics in which he believed profoundly but which has since been discarded by the world of thought. It is then a question whether the trustees shall see that nothing is taught that the founder would have disliked, or whether they shall assume that if he were living he would prefer a more modern and more liberal interpretation of the old doctrines.

§ 458. Unincorporated Associations

A charitable gift to a trustee or trustees for an unincorporated society or club is perfectly valid, even though, as stated above, such an association cannot itself be a trustee. Such a gift will be valid even where the trustee or trustees appointed are the officers or trustees of the society or club which is to be benefited by the creation of the trust.

Review Questions

1. What organizations and institutions are managed by boards of trustees or directors? What responsibility do these officers assume?
2. How are directors chosen in corporations? Who may vote at corporate elections?
3. How must such boards act? Can directors be removed? What is the usual authority of a board? What is the relation of the director of a corporation to the stockholders?
4. What are included under the term "charitable trust"? In your state, if a testator is indefinite or uncertain as to who is to be the beneficiary or the trustee, what will the courts do?
5. Does the rule against perpetuities apply to property left to a charitable trust?
6. May an unincorporated association act as trustee? What rules govern trustees of charitable trusts?

7. How are libraries, hospitals, and asylums managed? What are the duties of such governing boards? How are savings banks managed in your state?
8. What are the duties of trustees of educational institutions? What kind of men should they be?
9. May an unincorporated association in your state take a bequest of personalty or a devise of land? May a trustee be named in a will to take a devise for it? Who manages the affairs of an unincorporated association?

CHAPTER LIV

COMPENSATION OF TRUSTEE

§ 459. No Compensation to Trustee

In Great Britain, whence we derived our law of trusts, it is not usual to allow any trustee compensation. Over there, they have a legal maxim to the effect that a trustee may "make no profit out of his office." We have followed this rule so far as trustees and directors for charitable, educational, and public purposes, are concerned. It is not unreasonable to expect that capable men can be found who will give the time and care needed to manage the property and affairs of those institutions that exist not for profit but for the public good or to help the unfortunate.

It should be said that there are few capable business men in this country who do not give gratuitously time and ability to one or more institutions that yield them no profit or return. The rule that a trustee should "make no profit out of his office" properly applies to these, but in this country it is held not to apply to executives, guardians, and other trustees who handle private trusts, and are deemed entitled to compensation.

Trustees may have no compensation for their time and trouble, even when directed by a testator to carry on a business, unless the testator has made provision for such case in his will and has directed compensation. But, under a constructive trust, one who carries on another's business and is required to account for all profits, will be allowed compensation for necessary time or trouble expended by such a trustee in attending to the business.

§ 460. Reimbursement of Expenses

Both in England and in this country, a trustee is entitled to be repaid expenditures reasonably and properly incurred in the care of the trust property. It is necessary that the expenses should be within the limits of the trustee's authority, and a trustee should not incur any expenses beyond his authority, unless they are authorized by the court or agreed to by the *cestui que trust,* who in such case must be of age.

A trustee should keep accurate accounts if he expects to be repaid. The courts will not allow lump or estimated expenses. As to a trustee's power to incur expenses, see Chapters XLVII and XLIX.

A trustee is not compelled to give up any property in his charge until all proper expenses and disbursements made by him during his period of trusteeship have been repaid. Such expenses are considered a lien upon the estate.

§ 461. Rules in Regard to Compensation

In the United States it is the rule that executors, guardians, and trustees, should be paid for the services they render, and that it is not reasonable to expect gratuitous services in the care of property from capable business men. If, however, from the instrument creating the trust it seems that no compensation for the trustee was desired or ordered by the maker of the trust, no compensation will be allowed.

The statutes of the various states mention only the fees or compensation of executors, administrators, and guardians, but the equity courts by construction, and by enlarging upon their jurisdiction, have made the statutes include also "trustees."

In some states the court in its discretion awards compensation; in some the statute prescribes a commission and sometimes a per diem rate; and in others, fees and per diem rates were established long ago, and are now absurdly low.

When the executor or the trustee has caused loss by his negligence or mismanagement, he forfeits any claim to compensation.

§ 462. Amount of Compensation

In New York 5 per cent is allowed on the first $1,000, above that and up to $10,000 the rate is 2½ per cent, and on anything above that the commission is 1 per cent. If there are more than one executor, no additional fee is allowed unless the estate is worth over $100,000, in which case each executor will receive the full amount. When executors are afterwards trustees and the two functions are distinct, a separate compensation will be allowed for each service. Some of the other states are more liberal and give 5 per cent without regard to the amount. In California the fee is 7 per cent on the first $1,000, 4 per cent on the next $9,000, 3 per cent on the next $10,000, 1 per cent on the next $50,000, and ½ per cent on all others above that. In Massachusetts the trustees are awarded such compensation as the court may order, and this will vary according to the time and labor involved, the size of the estate, and the ideas of the court. In Virginia, the courts allow a commission of 5 per cent, though in cases where the duties of the trustee have been long and arduous and the responsibility great, a larger percentage has been allowed. In Alabama, no statute has determined the rate of a trustee's compensation, and it is determined upon the labor and trouble of the trustee, though generally the percentage allowed is 5 per cent. In Ohio, the rate is 6 per cent upon the first $1,000, 4 per cent upon the next $4,000, and upon all sums in excess of $5,000, 2 per cent. The court may also make such further allowance for extra services and expenses as is reasonable. In Illinois, trustees receive no compensation except under a special stipulation, but even under such stipulation, no allowance can be made for extra service in making journeys to collect debts

or claims, nor for defense in a suit against the estate, nor for services in defending a suit against the estate.

When a legacy is left to an executor, he will not be allowed also to receive commissions unless the will directs that the legacy is in addition to the commissions.

In those states where the allowance of compensation is in the discretion of the court, any misconduct on the part of the trustee causing loss will be ground for cutting down his compensation or for refusing it altogether.

In the will of Henry C. Frick, $100,000 was left to each of the executors.

Review Questions

1. Why were trustees allowed no compensation in England? What is the rule in your state? Are trustees of public institutions entitled to compensation?
2. What is the rule as to repayment of disbursements by a trustee? What is a trustee's duty as to money paid out?
3. Why are trustees compensated in the United States? How is this compensation ascertained in your state? If the trustee is negligent or mismanages the property, does it affect his claim for compensation?
4. When executors are later trustees, does that fact affect their commission? When a legacy is left to an executor, does that affect his compensation?

CHAPTER LV

TERMINATION OF TRUST

§ 463. How a Trustee Is Discharged

When a trust is terminated, the trustee is discharged. The trustee, however, may be discharged under some circumstances that do not involve the termination of the trust. The other trustees or a trustee appointed to fill the vacancy will continue the trust. A trustee may be discharged in the following ways:[1]

1. The fulfilment of the trust. In such case, the trustee should have a release from those to whom he has transferred the trust property, or he should have an order of court authorizing him to distribute the property, which, when done, would terminate the trust. In the case of an executor, he would have to file his accounting and its approval would discharge him.

2. By unanimous consent. If all the *cestuis que trust* are of age and consent, the trustee may be discharged and in many cases the property may be transferred and the trust may be terminated.

3. By removal for cause. If the trustee is guilty of misconduct, is incapable, refuses to obey orders of court, or has left its jurisdiction, he may be removed. This terminates his connection with the trust but does not end the trust.

4. The loss of the trust property by litigation or otherwise would, of course, by taking away the subject matter, end both the trust and the trusteeship.

5. The death of the trustee would end the trustee's con-

[1] Perry on Trusts, § 921.

nection with the trust, and a successor could be appointed, or his heirs or whoever else got hold of the property would take subject to the trust.

§ 464. Termination of Trust by Fulfilment

A trust is created to attain some object and is limited in duration to a specific time or until a specific thing is done. When the thing is done or the period has expired, the trust must end. A trust in funds left to buy certain property which was to be deeded to the testator's son when he attained his majority, would obviously end when the young man grew up and received the deed from the trustees.

A trust in property, the income from which was to be given to the testator's wife while she remained his widow, then to be conveyed to the testator's brothers and sisters, would end when the *cestui que trust* died or married again and the property had been conveyed to the remainder.

Any trust that has been fulfilled is accomplished and ended by the fulfilment. If the trustee has fulfilled it, he should have evidence in some shape of what he has done. This may be a release from the *cestui que trust,* or an account approved by the court, or a formal report made to a court of compliance with its order.

§ 465. Termination of Trust by Consent

A trust for a particular purpose, as to give a daughter an income for her life, cannot be terminated during her life; but there are trusts in which there is no obligation to the creator of the trust, or where it has become impossible to carry out the trust. In such cases, if all the *cestuis que trust* are of age and all agree that the trust may be terminated, courts of equity will decree the termination of the trust and direct that the property be distributed to those entitled to it. If any of the parties interested are minors or are otherwise inca-

pacitated to give legal consent, it would not be possible to obtain the necessary unanimous consent.

A trust for the benefit of a married woman is usually considered to have been created for the purpose of protecting her property from her husband or his creditors. In case of the death of the husband, the courts have, on application of the woman, decreed a termination of the trust.[2]

§ 466. Trusts That Cannot Be Terminated by Consent

Many trusts are formed expressly to prevent the *cestui que trust* from selling or disposing of the trust property. In such case, to allow the trustee and the beneficiary to agree to terminate the trust would defeat its primary object. In other cases a trust is created to provide a safe income for a wife or a daughter unskilled in managing property. Here again, the trust cannot be dissolved by agreement of the parties, even though of age. Generally, if the termination of the trust would defeat the intention of the creator of the trust, it will not be dissolved by consent of the trustee and the beneficiaries, even though all the beneficiaries are of age.

§ 467. Formalities of Termination

Executors and administrators, when they have settled the estate, paid all lawful debts, satisfied all legacies, and had their accounts approved, will be discharged by the court. If they are also trustees, the trust may run on for years after the estate has been settled. When the trust has been fulfilled, it would be the duty of the trustees to transfer or convey the property to those entitled to it according to the terms of the trust instrument.

It is usual for trustees, on making this final distribution, to secure a formal release of all claims from all who receive any of the property and are competent to consent.[3]

[2] Perry on Trusts, § 920.
[3] Perry on Trusts, § 922.

If there are any doubts as to the rights of any party to receive, or if there are rival claimants, or if there is any possibility of trouble in the future, the trustees may require a bond of indemnity from the beneficiaries or may decline to act without a decree of court.

If any are not of age, they cannot consent, and cannot release nor give a bond of indemnity. In such case, the trustee can readily secure evidence of the transfer and may be willing to risk payment, or he may refuse to act save on an order of court.

A receipt and a release are not conclusive, but they are *prima facie* evidence and require strong proof to set them aside.

A decree of court directing a particular distribution relieves the trustee from all responsibility and he would need no release, but prior to the decree the trustee must have made known to the court all facts bearing on the situation. A decree based on misinformation could be set aside.

If trustees pay over money to the wrong person, the right person can later make them pay it again. A trustee is not required to take any risk, hence in any case that is doubtful he may refuse to act until he has a bond to indemnify him in case of trouble, or he may decline to do anything until compelled by decree of court.

A trustee may pay money to the agent of the real party in interest. Before doing so, he must satisfy himself by some written evidence signed by the parties, that the agent is authorized to receive it. If the *cestui que trust* were abroad he could, by power of attorney, authorize an agent here to collect for him. This power of attorney would be revoked by the death of the *cestui que trust.*

> The costs of winding up a trust and distributing the money, and all expenses for documents, deeds, and other papers must be paid from the trust fund.[4]

[4] Perry on Trusts, § 933.

Review Questions

1. When is a trustee naturally discharged? Under what other circumstances would a trustee be discharged?
2. When is a trust fulfilled? What evidence should a trustee have of the fulfilment of his trust?
3. When will courts of equity refuse to terminate a trust though all interested consent? If a trust were made for a married woman and her husband died, could the trust be terminated?
4. A testamentary trust provided that the income be paid to a widow during her life, and on her death the principal be divided among her children. If the children all were of age, could they ask the widow to terminate the trust by consent? Give reason for your answer.
5. What must be done before an executor is discharged? If an executor were also a trustee, what would he have to do? What should be secured as evidence of final distribution? If there should be conflicting claims for any part of the estate, what should the trustee do? In case of minors, what may a trustee do? What is the effect of a decree of court? If a trustee by mistake pays the wrong party, what is the result?

PART V

BANKS AND TRUST COMPANIES AS TRUSTEES

CHAPTER LVI

A FINANCIAL CORPORATION AS EXECUTOR, ADMINISTRATOR, OR TRUSTEE

§ 468. Introductory

In taking up this part of the subject, it is assumed that the reader has read the foregoing chapters and is therefore familiar with the various fiduciary capacities and knows the duties of each. Therefore no attempt is made in this and the following chapters to define the various terms or to describe the various duties. The term "fiduciary" is often employed because it includes all of the differing capacities, such as executor, administrator. trustee, guardian, committee, etc.

§ 469. Choosing an Executor

In former times, when a man was about to make a will or execute a trust, he cast about him to find someone among the members of his family or his friends whom he believed to have the necessary qualifications to administer his estate and distribute it among those named in the will, or to execute the terms of a trust. It is by no means an easy matter to find just the right person, who is also willing to undertake the burden which the testator desires to impose.

In our modern civilization this difficulty may easily be obviated. Banks and trust companies are empowered to act in such capacities. The custom of appointing a bank or a trust company is becoming universal, and as time goes on and the science of fiduciary work is more highly developed, the appointment of an individual instead of a bank or a trust company will be unusual.

Executors, administrators, trustees, guardians, committees,

conservators, curators, agents, and all those who hold other people's property for them, are fiduciaries. Therefore, a fiduciary is one who holds something—property, money, or the right to either—in trust for another. He is a trustee.

§ 470. Financial Corporations as Trustees

Any person who is capable of making a contract—that is, any person twenty-one years of age or upwards and of sound mind—may act as a fiduciary; and in a sense, although it may not be by formal act, we all function as fiduciaries from time to time, as when any one of us invests money for another. In addition to individuals, national banks, trust companies, and, in many states, state banks may act in any or all of the fiduciary capacities; and it is to the work of these institutions in their fiduciary capacities that this and the following chapters will be devoted.

§ 471. Trust Companies and State Banks as Trustees

For many years, or to be more exact, since the early part of the nineteenth century, trust companies have had these fiduciary capacities. In the earliest times, special charters giving trust powers were obtained from the state legislatures. Recently trust powers have been conferred by the various state banking corporation laws, so that at the present time such rights may be obtained in the same manner that any financial corporation obtains its right or license to do business. It is of course necessary that the provisions of the banking corporation law of the particular state be exactly complied with.

In the case of state banks, the conferring of fiduciary powers has arisen since the federal law granting national banks such right or power went into effect, and is, therefore, of recent origin. It is only by virtue of the banking law of the state of location and under which the bank is incorporated, that a state bank can be empowered to exercise trust functions.

§ 472. National Banks as Trustees

Originally, only trust companies had fiduciary capacity, but by virtue of the Federal Reserve Act the same power was given to national banks. Section 11 K of the Federal Reserve Act provides that:

> The Federal Reserve Board shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.
>
> Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies or other corporations, which compete with national banks, the granting to and exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of the act.

The fiduciary power of trust companies and state banks has not been questioned, but the right of a national bank to maintain a trust department has been seriously questioned in various jurisdictions; and in each instance where the courts have been called upon for a decision, they have decided in favor of the national banks.

§ 473. Decisions of the Courts

In the leading case[1] on the question the late Chief Justice White of the Supreme Court of the United States wrote the opinion. The rule was there laid down that, although a certain business may be of a private nature and subject to state

[1] First Nat. Bank v. Fellows ex rel. Union Trust Co., 244 U. S. 416.

regulations, if it is of such a character as to be successfully discharged by a bank chartered by Congress, Congress has authority to give the bank power to transact such private business. This rule precludes the state—although it may in a general sense possess authority to regulate such business—from using its authority to prohibit such business by national banks, since to do so would be an effort on the part of state authority to prohibit Congress from exercising a power which under the Constitution it has been given ample authority to exercise.

The Chief Justice further points out that it follows that, although a business is of such character that it is not necessarily susceptible of being included by Congress in the powers conferred on national banks, yet such powers could be conferred if by state law, state banking corporations, trust companies, or others which are rivals or *quasi* rivals of national banks, were permitted to carry on such business. This must be the case, since the state may not by legislation give an advantage to the competitors of national banks and at the same time deny the power of Congress to meet such created competitive condition by legislation appropriate to avoid the injury which otherwise would be suffered by the national agency.[2]

§ 474. All State Rules Must Be Obeyed

In order that any bank, either national or state, or any trust company, may maintain a trust department, it is a condition precedent, established by the laws of each state and by the Federal Reserve Act, § 11 K, that the statutes of the state where the bank or the trust company is located, be complied with. For example, it is usually provided that the bank or the trust company must have a certain minimum capitalization, fully paid, and a certain surplus. Bonds equal to a certain

[2] See also Hamilton *et al.* decided April, 1920, in the Supreme Court of Connecticut; In re Estate of Stauchfield, Supreme Court of Wisconsin, June, 1920. (These cases have not yet been published in the law reports, but will appear shortly.)

percentage of the capital must be deposited with the superintendent of banks or other state official vested with control of such matters. In New York State the minimum paid-in capital of a trust company must be $100,000 in a city with not over 25,000 population, increasing to $500,000 in cities of over 250,000. Also, each stockholder is liable for an additional amount equal to the par value of his stock. Bonds equal to 10 per cent of the total capitalization must be deposited with the superintendent of banks. This deposit is to secure trust funds and the operations of the trust department. In the case of insolvency of the bank or the trust company, the beneficiaries of trust funds have a prior lien or right as to this deposit. The deposit may be in securities acceptable to the state banking department or, in some states, in the form of a surety company bond.

These rules apply to all banks maintaining a trust department, and to national banks, as well as to state banks or trust companies.

§ 475. How Trust Assets Are Protected [8]

National banks exercising any or all of the powers given them under the act must segregate all assets held in any fiduciary capacity from the general assets of the bank and must keep a separate set of books and records showing in proper detail all transactions engaged in under authority of the act. Such books and records are open to inspection by the state authorities to the same extent as the books and records of corporations, organized under state law, that exercise fiduciary powers. There is nothing in this act, however, authorizing the state authorities to examine the books, records, and assets of a national bank which are not held in trust under authority of this act.

No national bank may receive in its trust department de-

[8] See Federal Reserve Act, § 11 K.

posits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the bank, awaiting investment, must be carried in a separate account and shall not be used by the bank in the conduct of its business unless it first sets aside, in the trust department, United States bonds or other securities approved by the Federal Reserve Board, to an equal amount.

In the event of the failure of such bank, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart, in addition to their claim against the general assets of the bank.

Whenever the laws of a state require corporations acting in a fiduciary capacity to deposit securities with the state authorities for the protection of private or court trusts, national banks so acting are required to make similar deposits; and securities so deposited shall be held for the protection of private or court trusts, as provided by the state law.

National banks in such cases are not required to execute the bond usually required of individuals if state corporations, under similar circumstances, are exempt from this requirement. National banks have power to execute such a bond when so required by the law of the state.

In any case in which the laws of a state require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice-president, cashier, or trust officer of such national bank may take the necessary oath or execute the necessary affidavit.

It is unlawful for any national banking association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officers, director, or employee making such loan or to whom such loan is made, may be fined not more than $5,000, or imprisoned not more

than five years, or may be both fined and imprisoned, at the discretion of the court.

§ 476. Rules as to Issuance of Permits to National Banks [4]

In passing upon an application for permission to exercise the powers enumerated in this act, the Federal Reserve Board may take into consideration the amount of capital and surplus of the applying bank, whether or not such capital and surplus are sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to it proper, and may grant or refuse the application accordingly:

> Provided, That no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by state law of state banks, trust companies, and corporations exercising such powers.

Application by national banks should be made to the Federal Reserve Board on forms provided by that board.

§ 477. Management of Trust Funds by National Banks

The trust department of a national bank must keep books and records separate and distinct from the books and records of the commercial departments. They must be open for inspection of federal or state authorities at all times.

The trust department of a national bank and all trust securities and investments must be placed under the management and joint control of two officers or other employees designated by the board of directors and whose duties are prescribed by the said board. All such officers or employees should be bonded. Because of the difference in the laws of the various states governing the relation of fiduciary and beneficiary, the Federal Reserve Board has not considered it practicable to formulate a uniform set of by-laws for national banks which

[4] See Federal Reserve Act, § 11 K.

have been granted authority to exercise trust powers. Nor has it in any other manner attempted to define the duties and powers of the officer or officers in charge of the trust department of national banks. The precise duties and powers of these officers is a matter for the determination of the board of directors of each bank.

When national banks about to open trust departments have asked the Federal Reserve Board for information as to the proper manner of conducting those departments, the board has suggested in each case that the trust department be placed under the management of a competent and experienced trust officer, and that competent local counsel be employed to assist in prescribing the duties of that trust officer and to advise with reference to the exercise of the bank's trust powers.

§ 478. Rules as to the Investment of Trust Funds

In connection with § 11 K and in answer to inquiries, the Federal Reserve Board has promulgated certain regulations known as Regulations F. Before a national bank attempts to instal a trust department, a careful study of Regulations F, as well as § 11 K, is necessary. Only part of these regulations are given in the text. Funds held in trust must be invested in strict accordance with the terms of the will, deed, or other instrument creating the trust. Where the instrument creating the trust contains provisions authorizing the bank, its officers, or its directors to exercise their discretion in the matter of investments, funds held in trust may be invested only in those classes of securities which are approved by the directors of the bank. It was not intended, however, to require that each particular investment of trust funds be specifically approved by the board of directors, but merely that the directors define the classes of securities in which trust funds may be invested in those cases where the bank is authorized to exercise its discretion. Where the instrument creating the trust does not

specify the character or the class of investments to be made and does not expressly vest in the bank, its officers, or its directors, a discretion in the matter of investments, funds so held in trust must be invested only in those securities in which corporate or individual fiduciaries in the state in which the bank is located may lawfully invest.

§ 479. Rules as to Court Trusts

A national bank acting as executor or administrator or in any other fiduciary capacity, under appointment by a court of competent jurisdiction, must make all investments under an order of that court, and copies of all such orders shall be filed and preserved with the records of the trust department of the bank. If the court, however, by general order vests a discretion in the national bank to invest funds held in trust, or if, under the laws of the state in which the bank is located, corporate fiduciaries appointed by the court are permitted to exercise such discretion, the national bank so appointed may invest such funds in any securities in which corporate or individual fiduciaries in the state in which the bank is located may lawfully invest.

§ 480. Trust Funds Awaiting Investment

Funds received or held in the trust department of a national bank, awaiting investment or distribution, may be deposited in the commercial department of the bank to the credit of the trust department, provided the bank first delivers to the trust department, as collateral security, United States bonds, or other readily marketable securities owned by the bank, equal in market value to the amount of the funds so deposited.

Before a national bank deposits any of its trust funds in its commercial department, it must deliver to the trust department securities of the kinds and in the amounts specified in this section of the regulation. A deposit of securities with the state

banking authorities, as security for court and private trusts generally, is not a compliance with the requirement quoted above.

Review Questions

1. What is the meaning of the word "fiduciary"? What are the usual fiduciary relations?
2. What are the qualifications of an executor? Why is it difficult to select an individual executor?
3. Who may act in a fiduciary capacity? What institutions may act as trustees?
4. How long have trust companies had such power? Why have state banks been authorized to exercise trust powers?
5. When were national banks authorized to act as trustees? Under what circumstances are they permitted to act?
6. What did the courts decide as to the exercise of trust powers by national banks?
7. Are state laws regulating corporate trustees binding on national banks? What minimum paid-in capital is required for trust companies in your state? How are the beneficiaries of trust funds protected in your state?
8. How are trust funds segregated? What is the rule as to state inspection of the trust department of a bank? May trust funds be used as any other deposit? What is the rule as to this? Is there any other law in your state to secure trust funds in banking institutions? Who must make any affidavit required?
9. Who has authority to issue permits to national banks to exercise trust powers? What are the minimum requirements in your state? Who has charge of the trust business in a bank?
10. Who manages the trust department of a national bank? Why does the management of such a department vary in the different states?
11. How must trust funds be invested? Who decides on investments left to "the discretion of the bank"? What are the statutory rules in your state as to investments of trust funds?
12. What are the general rules as to banks appointed to execute trusts under an order of court?
13. When may trust funds be deposited in the commercial department as other funds are deposited? Does the general deposit prescribed by statute cover such deposits?

CHAPTER LVII

ADVANTAGES OFFERED BY CORPORATE FIDUCIARIES

§ 481. Difficulty of Selecting a Suitable Executor

The advent of the bank in a fiduciary capacity is comparatively recent. Even the trust company acting as fiduciary gives a service with which the public at large is more or less unfamiliar. It is the purpose of this chapter to point out some of the many advantages of a bank or a trust company as a fiduciary over the individual.

When a person prepares to execute his last will and testament, one of the first difficulties to confront him is the selection of an executor and trustee. He must select someone who will in all probability survive him. He hopes that the person will live to administer the estate and to execute the trusts created by the will.

The uncertainty of human life is such that no matter what care is used in making the selection, the person chosen may die before the testator or before completing his executorship, or if more than one is appointed, all may die or otherwise become incapacitated and therefore unable to execute the trust.

§ 482. Why a Bank or a Trust Company Is to Be Preferred

If a bank or a trust company is designated, all this difficulty is avoided. The life of the corporate executor or trustee is perpetual. In the nature of things it cannot become ill or incapacitated.

By the terms of a certain will, trusts were set up, and three persons designated as executors and trustees. Two of them

were friends of the testator and the third was the testator's wife. The testator died and all three executors duly qualified.

Before the trusts terminated, one of the friends resigned; then one died. The widow continued to act for a number of years and then she died. Her oldest son made application for appointment. He was then a middle-aged man of robust health. However, on the very day he was appointed word was received by his attorney that he had died the previous day.

Then followed further difficulties, and unpleasant litigation was avoided only by a compromise arrangement which provided for the appointment of two trustees, neither of whom had had any previous experience and one of whom was unqualified for the duties of trustee by human frailties. Neither of them would ever have been selected by the testator. Had he in the first place designated a bank or a trust company as his executor and trustee, none of these difficulties could ever have arisen.

The corporate fiduciary, whether a bank or a trust company, never becomes ill. It never goes on a vacation or a business trip. It is always at its place of business, ready to attend to the affairs of the estate entrusted to its care.

How often does it happen in the case of an individual executor or trustee that, at the very time it is necessary to see him about some business of the estate, he is away, or is unable to attend to it, no matter how vitally important it may be, because he has been ill or has been called away on his own affairs?

§ 483. The Accessibility of a Corporate Fiduciary

An important consideration in the selection of a fiduciary is accessibility. A bank or a trust company is always accessible. Its office is centrally and, to all intents and purposes, permanently located. An individual frequently moves his office or his residence. Both office and residence may be and often are

out of the way. People who have business to transact with the estate may not find it easy to locate the individual executor's place of business. Practically everyone knows the location of the bank or the trust company. Also everyone is familiar with the regular business hours of the bank or the trust company, whereas the business hours of individuals vary with the nature of their businesses.

§ 484. Competency of Corporate Fiduciaries

Acting in a fiduciary capacity is a business in and of itself. It requires a great deal of study and experience. How many individuals have ever studied the duties of a fiduciary? How many have had any experience in a position of this kind? To be sure, a few individuals have acted in some one of these capacities once or twice before, but how far that is from making them expert!

Is it reasonable to expect an inexperienced person, even though well educated and intelligent, to transact an important piece of business with very little or no previous preparation, and about which he has hitherto known almost nothing? Then how evident it is that a testator should not appoint an executor or a trustee who has no training or experience in that capacity.

A man should always realize that the work of his lifetime, namely, the building up of sufficient means to provide for his family after he has gone, may be defeated by the acts of an inexperienced fiduciary. Remember that in such case there is no indemnity to be obtained because executors often do not have to file bonds, and even when required to do so the bond can be relied on only for infidelity, that is, to make good positive dishonesty.

On the other hand, a bank or a trust company is thoroughly experienced in all these fiduciary capacities and may be said to be fairly expert. The men in charge of the work are handling the business of the fiduciary every business day of

the year. They are selected by the bank or the trust company because of their knowledge and previous training. So many and such a variety of cases have passed through their hands, many of them extremely complicated, that whatever the situation that confronts them, it will be handled in the manner bringing the best results to the estate and therefore to the beneficiaries.

§ 485. The Manifold Duties of an Executor

When a person of large or comparatively large means dies, the administration of his estate necessarily involves a great deal of detail work. It takes much time for the executor to work out these details, as anyone at all familiar with administration matters must realize. Some of these matters have already been given in the earlier chapters of this work, but for the sake of emphasis we shall repeat some that have to receive attention.

The personal representative (executor or administrator), having qualified, must then collect all the assets of the estate. These may, of course, be in many different forms and in many different places. Usually, one finds several savings bank accounts, a number of investments in stocks and bonds of corporations, very likely a number of bonds and mortgages on real property, and frequently an interest in a going business.

The personal representative must also prepare to pay all the debts of the decedent. Whether or not he is required to advertise for claims against the decedent, it is better practice to do so both as a matter of protection to himself and because by so doing he can settle the estate within a shorter period —in New York within six months—than he could if he did not advertise. He must also receive and record all claims against the estate. Properly none of these, except possibly the undertaker's bill, should be paid until all of the known claims have been filed and the time of filing has expired, so that there can

be no claim of a preference in favor of one creditor over another. Careful records should be kept of both the receipt of principal and income of the estate and of claims against the estate.

§ 486. Necessity of Keeping Accurate Records[1]

Any person acting as the personal representative of a decedent owes it to the beneficiaries of the estate and to the friend who has appointed him in this capacity to keep accurate and honest records of all his transactions. Not only does he owe this to the beneficiary and to the decedent, but he should also do so for his own protection and in order that he may at the proper time be able to give an accurate and true account of his proceedings.

In spite of this, however, it is not an uncommon thing for an individual acting as personal representative to keep no records other than a check-book. His only records of the claims against the estate are the bills themselves, which he does not enter in any book of account. Such an individual usually leaves all of his duties to be carried out by the attorney for the estate and acts more or less as an automaton in signing checks and documents when and as requested by the attorney, taking it for granted that the attorney will always advise him correctly. It is probably true that the attorney would advise him correctly, but that does not relieve the personal representative from the duty of knowing that what he is doing is what should be done. The attorney should be called upon for legal work only, that is, to advise as regards the legal points that come up in connection with the administration, and to draw up the various papers, including the petitions and accounts of proceedings, the decrees, and such other legal documents as there may be. The attorney, of course, should be called upon to prepare any needed releases or satisfactions of mortgages.

[1] See Chapter LXV, "Purpose and Theory of Estate Accounting."

§ 487. Care Required for Manifold Details

It is the duty of the personal representative to attend to all of the administrative details. An individual acting in a fiduciary capacity usually cannot give the attention he should to his duties for the reason that he has the business of making his own living and the care of his own personal and business affairs, which are naturally likely to come first. In selecting an executor it is usually preferable to take a person who has proved his ability by attaining success in his own business, but the reason for his success, in ninety-nine cases out of a hundred, would be the careful attention which he had always given to his affairs, and if he is to continue to manage them successfully he will be compelled to give them this same unremitting attention in the future. It is obvious that this means that the matter of his fiduciary duties will receive only secondary attention.

The importance of these duties is pointed out for the purpose of emphasizing that they require and should have careful attention and should be the primary concern of the executor. When a bank or a trust company is appointed in a fiduciary capacity, it gives the matter of handling the affairs of the estate or trust all the attention that it may require. Acting in the various fiduciary capacities is the chief and only business of the department of the bank which handles this sort of work, the trust department. That department has nothing to demand its attention other than the affairs of the estates in which it is acting as fiduciary. Therefore those affairs receive the primary attention to which they are entitled. This alone is sufficient reason for preferring a corporate fiduciary.

§ 488. The Question of Expense

There are many considerations which one must have in mind when he is about to make his will or to prepare any instrument creating a trust. Among these various considera-

tions, a very important one from the standpoint of the beneficiary is that of expense.

The question that then arises is whether it is more expensive to appoint A or B and C (individuals) as one's executors and trustees than to appoint a bank or a trust company. Naturally there are fees and expenses to be paid in any case, but in which case will the fees and expenses be least?

In all states there are statutory provisions providing for the fees of fiduciaries. In some states the fees are definitely fixed, as in New York. In others the matter is in the discretion of the surrogate's or the probate court within certain limitations, as in New Jersey. Whatever the statute may provide, it is the same for a corporate fiduciary (bank or trust company) as it is for an individual. So that as to fees as such there is no choice.

As to the fees of the lawyers who must be retained to probate the will and to advise the fiduciary, and who must attend to the many legal matters involved in the administration of an estate, there is likely to be some difference. Where an individual acts, he is almost entirely dependent upon the attorney for instruction in his duties. As has already been said, the individual in the great majority of cases does little or nothing himself but leaves it all to the attorney, even to the keeping of the proper records. This is shown in almost every instance where a corporate fiduciary retains an attorney whose previous experience has been with the individual. Such an attorney enters upon his duties as if he himself were the fiduciary and in some cases seems to feel aggrieved because the corporate fiduciary expects really to be the executor or trustee and to exercise all official functions.

If the executor utilizes the attorney in this way, the estate for which he is acting pays for it. The attorney cannot and should not be asked to devote his time to matters which are really no part of his work unless he is to be paid for it. Since

the fiduciary is getting his fees for this very work, the estate is practically paying double. In fact it is being charged not on the basis of the rather small fees allowed to the executor, but on the basis of the fees that the attorney believes to be a fair return for his professional services.

Where a bank or a trust company acts as fiduciary, it takes care of all these details. It obtains the surrogate's certificates, comptroller's waivers, and other documents required in the liquidation of the assets of an estate. It prepares the statements for the attorneys to make up the transfer or inheritance tax affidavits, the federal estate tax affidavits, and the intermediary or final judicial account of proceedings. It takes care of the distribution of the proceeds of the estate, taking the proper receipts and releases which have been prepared by the attorneys.

Moreover, where a large financial institution acts in a fiduciary capacity, it naturally can and does exert a control over the attorneys, especially if the attorneys happen to be the regular counsel for the bank or the trust company, as is usually the case. In a proper case the fee can be adjusted. We do not mean that it is the practice of banks or trust companies to cut the fees of the attorneys, but the attorneys sometimes may overestimate the ability of the estate to pay, in which case it is proper to call their attention to the matter. The individual, on the other hand, would probably be unable to accomplish much along these lines. It is fair then to say that from the standpoint of the legal expense the bank or the trust company would be likely to be the less expensive fiduciary.

§ 489. Individual Administration of Large Estates

Let us go a step further. Consider, if you will, a large estate involving several trusts and in which the administration is complicated. Let us suppose that the trusts are likely to last for many years. Assume that among the assets there are

various pieces of rentable real property, such as tenement houses and stores, that there are also bonds and mortgages on real property, and in addition investments in corporate bonds, etc. If three individuals were acting, where the estate exceeded $100,000, as in such case it would, there would in the state of New York be three full commissions to be charged against both principal and income. The bank or the trust company, unless there were co-executors or trustees, could charge only one set of commissions.

In the case cited, the individual executors and trustees would have to establish an office and a force of clerks to handle the affairs of the estate. They would have to have a safe-deposit box in which to safe-keep the securities. The expenses for all this, rent, salaries, stationery, telephone, etc., would be a proper charge against the estate, chargeable partly against principal and partly against income. There are many instances of just such cases of costly administration as that recited above.

If a bank or a trust company were the executor and trustee, either solely or jointly with an individual, all of these items would be considered overhead and no charge would be made and no part of the expense of this nature would come out of the estate. In other words, the bank or the trust company is equipped to handle just such estates, and can take care of the big ones as capably and as efficiently as the small and at less expense than can the individual fiduciary.

Individuals acting as administrators, executors and trustees are usually required to file bonds unless the will provides that they shall not. However, in the case of substituted trustees, that is, where the original trustees have died or resigned and new ones are appointed, they will in all cases be compelled to file a bond before they can qualify. The premiums for these bonds become quite a large item where the estate is of any size. Where there are trusts, the premium is payable every year.

When a bank or a trust company is appointed, no bonds are required because of the fact that they have great resources back of them in addition to having deposited securities with the banking authorities of the state in which they are located, and in the case of national banks there is further protection, as shown supra in § 11 K of the Federal Reserve Act.

§ 490. Care Required to Conserve Income

The fiduciary should consider not only the reduction of actual expense, but also any other economies or saving that can be accomplished. When an individual is the fiduciary, we must consider the waste incident to separate action as well as the fact that he has his own affairs to attend to, which, as has been said, will receive his first attention.

In an estate of any size, there will be income falling due from time to time. In many instances this will come from corporate bonds and from real estate bonds and mortgages. If there are corporate bonds, in most cases they will be coupon bonds. These should be kept in a safe-deposit box. The individual must therefore go specially to the safe-deposit box to cut coupons, or if the bonds are maturing he must get the bonds themselves to present for payment. He must prepare the ownership certificates called for by the Federal Income Tax Law. He must know or ascertain the status of the bonds as to tax free covenant clauses. With all this before him, how often does he present the coupons on the due date? Remember he has his own private affairs and business to attend to and these are side issues. As a matter of fact, experience shows that the individual, to say the least, is very irregular as to the time of presentation of coupons and even of maturing bonds, and is frequently from one day to a month or more, in extreme cases, behind time. Every day's delay is a loss of interest to the estate of which he is the executor, administrator, trustee, or other fiduciary.

If a bank or a trust company were acting as fiduciary, the coupons or the maturing bonds, as the case might be, would be actually collected on the date due and the money reinvested promptly, so that there would be no lapse of time during which the money was not earning interest, and there would be no delay in making distribution of income if that was the duty of the fiduciary. If one would just consider the loss of interest on, say, a $10,000 bond maturing at a certain date because of the failure to present that bond when due, then one would realize the saving to the estate that results by reason of the fiduciary's acting promptly in such matters.

§ 491. Corporate Fiduciaries for Long Terms

Where a will creates a trust estate, that is to say, where an estate is held for a number of years for the benefit of the widow or the children of the testator, or both, as the case may be, the trustee has duties of considerable responsibility to perform. The executor has, as has already been shown, the duty of administering the estate; that is, of liquidating it, including the collection of all principal and the turning of it into cash, and the payment of all debts. The executor must then render his final account of proceedings, which is then passed upon by the probate or the surrogate's court having jurisdiction thereof. The decree confirming the account of proceedings as rendered by the executor, and with such amendment as the court shall deem to be proper, will provide for the turning over of the trust funds to the trustee.

The trustee may be the same person as the executor, but the duties of the executor and of the trustee are distinct from each other. What is turned over to the trustee by the executor will be for the most part cash. The trustee then has the duty of investing this cash in accordance with the statutes in regard to trust investments or in accordance with the terms of the will, as the case may be. It should be pointed out that the

statute provides that trust funds shall be invested only in certain securities, eligible for trust funds. What these securities are, however, differs in the different states. In New York the trustee may invest in the same securities that are eligible for investment by savings banks or insurance companies. However, a testator may provide in his will that the trustee is not bound by the statutory limitations with respect to investments, and that he may use his judgment as to what kind of investment he will buy for the estate.

Therefore, the person about to make a will containing any trust provisions should consider the qualifications of the executor and the trustee, especially the latter, with respect to his judgment in making investments and also to his knowledge of what constitutes a legal investment for trust funds and of general market conditions. Probably there are few individuals other than those actually engaged in the buying and selling of securities, who are really familiar with market conditions.

§ 492. Corporate Fiduciaries Are Skilled in Making Investments

A bank or a trust company has generally had extended experience in buying securities for investment. Not only is it doing this sort of work for other trusts in which it is acting, but it is buying securities for investment for many of its customers all the time. The bank or the trust company, furthermore, has the very best information obtainable on all conditions with respect to bonds and other securities, and it has the means of obtaining practically any information that is obtainable at all as to the various kinds of securities in which money may be invested, whether it be securities known as "legal investment for trust funds," or the ordinary bond or the preferred stock of a corporation. Therefore the bank is able to obtain the best possible prices when selling and the lowest prevailing prices when buying.

Furthermore, a bank or a trust company is in a position

to obtain a knowledge of market conditions not only in the particular vicinity where it is located, but also throughout the world. The larger the institution is, the better its facilities for obtaining this knowledge. For example, some of our larger banks and trust companies have branches in foreign countries. All of the large banks have representatives in foreign countries. Also they have men traveling over all the United States and Canada, whose duty it is to report upon conditions in special localities, so that at all times the bank or the trust company is kept informed as to the present conditions and what they are likely to be. This knowledge is extremely helpful in making investments of trust funds.

§ 493. A Case in Point

There is a New York case in connection with the administration of an estate which would seem worth while considering: A certain man died leaving a widow and a daughter. At the time of his death he was a member of the New York Stock Exchange and also a member of a firm doing business as brokers in Wall Street. The testator directed in his will that his seat on the Stock Exchange should be sold as soon as possible after his death. The testator appointed his partner and his personal attorney as his executors. The partner advised against the immediate sale of the seat on the Stock Exchange, believing that it would increase in value, but instead of increasing in value the reverse occurred. Eventually the widow demanded an accounting and then proceeded to surcharge the accounts of the executors because they had failed to sell the seat on the Stock Exchange as directed by the will. She proved that it would have been possible to sell the membership for a price of about $80,000, whereas at the time of the accounting the price of the membership was $56,000 to $57,000. The surrogate surcharged the account of the executors with the difference betwen $80,000 and $56,000, or

$24,000. The executors had to take this out of their own pockets. Fortunately for the widow and the daughter, the executors were men of means and therefore no loss occurred to the beneficiaries. If, however, the executors had not been well-off men, the widow and her daughter would have suffered by reason of the loss, because in this particular case no bond had been required. The case was appealed, and in the court of appeals the decision of the surrogate was affirmed in all respects. It cost the executors $12,000 each and the costs of litigation.

Review Questions

1. Why is the uncertainty of life an objection to the appointment of an individual as executor?
2. What are the obvious advantages of having a corporate trustee?
3. Why is a corporate trustee more accessible than an individual trustee?
4. Why is a bank or a trust company more competent than most individuals? Why is it more responsible? What are the advantages of experience?
5. What are the principal duties of an executor or an administrator as to collecting assets? As to paying debts? As to keeping records?
6. Why must an executor or an administrator keep careful books of account?
7. Why are most men, though otherwise qualified, unable to give the time demanded by the office of executor? Why is a bank or a trust company able to do this?
8. How would individual administration compare with corporate administration as to expense? What are the fees in your own state? What can be said as to fees paid lawyers?
9. How is a large estate administered when the executors are individuals? How would a bank or a trust company save here? Do corporate fiduciaries have to file bonds?
10. What care is necessary in collecting income? Why can the financial corporation do this better and more economically?

11. Why is a corporate trustee most advantageous for long-term trusts? What is the distinction between the function of an executor and the function of a trustee? Why is it desirable that trustees should be skilled in making investments?
12. Why is a financial corporation likely to be skilled in investing funds?
13. To what extent is an executor liable for losses in buying and selling securities or other property?

CHAPTER LVIII

COMPARISON OF INDIVIDUAL AND CORPORATE FIDUCIARIES

§ 494. Effect of Family Dissensions

Those who have had any experience in the matter of settling an estate know only too well how many times family dissensions occur, even in families where there has been good feeling until death has taken away the head. The causes for dissension are as numerous as the vagaries of the human mind. The poor executor or person charged with the duty of administering the estate is usually the victim of these family disputes. Often he is a member of the family and has a personal and pecuniary interest in the administration. As a result he is often unjustly charged with unfairness. If he is not a beneficiary, he is, being human, charged with favoritism, justly or unjustly. Most of us are more or less avaricious. We say we want what is coming to us and we want it now. The executor, whether an individual or a corporation, is entitled to a period of time varying from six to eighteen months, depending upon the jurisdiction and upon whether there has been publication for claims; but the beneficiary often does not want to wait all this time.

The executor, however, must protect himself. If he should proceed to satisfy the demands of the insistent beneficiary, he might find himself in a bad plight. He might find that the estate of which he is executor is insolvent or that at best it can pay only a portion of the legacies. If one beneficiary has received his legacy, and as a result creditors or other beneficiaries suffer, the court would surcharge the accounts of the executor

and he would have to make up the amount out of his own pocket. When one considers how insistent some beneficiaries are and how they harass an executor, one may also realize how an executor desirous of pleasing and keeping in the good graces of the legatees might let this very thing happen, and so assume an entirely unjustified risk.

Then again, dissension arises because someone is dissatisfied with the provision made for him, because he is not the executor, or because the executor's method of handling things differs from his ideas. Whatever the cause, the result is always unpleasant and unsatisfactory. The hostility that arises between the fiduciary who is to execute the provisions of the will as trustee and the beneficiary, is often acute at a time when the trustee named in the will has died and it has become necessary to appoint a substitute trustee.

§ 495. A Typical Case

Typical of the cases that result from injudicious selection of fiduciaries, is the following: A certain man possessed of substantial means, consisting for the most part of real property, had a wife and five children. He left all his property in trust for the benefit of his wife during her lifetime, then the real property was to be sold and the proceeds divided into five equal sums, one for each of his five adult children. He appointed his wife sole executrix and trustee. She lived for a number of years, merely collecting the rents and using them herself as beneficiary.

She was inexperienced and left the actual handling of the property to her eldest son and to a confidential clerk who had been in the employ of her husband for many years. The son was unscrupulous and unskilled in business. The confidential clerk, while honest, had had but little business experience in handling real estate. By good fortune rather than as a result of wisdom, the real property was kept intact, but was allowed

to run down. Only such repairs were made to the property as were necessary to keep it rented.

When the widow died, application was made to the court by the eldest son to be appointed sole substituted trustee. One of the five children objected, and the surrogate after hearing both sides appointed all five of the beneficiaries substituted trustees under the will. A majority of the trustees were desirous of selling the property for any price that they could obtain, irrespective of the real value. However, since in New York it is necessary to have the unanimous consent of all the trustees to sell real estate, the property could not be sold. Real estate dealers soon became aware that there was a family dispute, and believed that by waiting the property could be bought for a comparatively small amount. A beneficial lease could not be entered into, because those who wanted to sell would not consent to a long lease for fear that a sale might be lost. No substantial repairs could be made, although sorely needed.

There was constant litigation for a period of four years, and finally all income was held up for several months. The matter was continuously before the surrogate. Finally, in order to prevent their removal, the trustees agreed to put the property up at public sale. The majority organized a corporation and were able to procure a substantial sum of money to buy the property in, or to protect themselves against a sale for an inadequate price. By a small margin they were able to purchase the property themselves and turn it over to the corporation. Two out of the five beneficiaries would not enter upon this arrangement and claimed their distributive shares entirely. The three that organized the corporation are now enjoying comfortable incomes paid them in the form of dividends.

§ 496. Contrasted Administration by Bank or Trust Company

Had the testator appointed a bank or a trust company as executor or trustee, none of these difficulties would have arisen.

The property would have been kept in order, its value would have been maintained, the public would not have been impressed with the idea of there being a family dispute, and the true value of the property could probably have been obtained at a private sale. All of the family hostilities and unpleasantness would probably have been eliminated because the bank or the trust company would have been impartial. Each question as it arose would be decided on business principles and no one member or branch of the family would be able to influence the fiduciary against the other members.

The corporate fiduciary is always willing to listen to all sides of a question in order to get full information with regard to the facts. It is willing to get the judgment of those who are familiar with the affairs of the trust or with the conditions that exist, and also to listen to the opinions of others; but having done all this, it then makes up an independent decision based upon all of the facts, uinfluenced, unbiased, and unprejudiced. An individual fiduciary, since he is human, is incapable ordinarily of acting without permitting his natural prejudices and other personal influences to come into the matter.

It has been said that the great objection to a bank or a trust company in a fiduciary capacity is that it lacks personal contact or personal interest. Experience shows that too much of the personal element often results in something other than the best judgment. The foregoing paragraphs illustrate this fact. It is not true, however, that the personal interest is entirely lacking when a bank or a trust company is in charge. If one will consider that, after all, such a fiduciary must act through its officers, that its business success depends upon pleasing those for whom it acts, that of all things the bank or the trust company is desirous of having the very people who have been the beneficiaries under one trust appoint the bank or the trust company as executor or trustee of their own wills, one cannot but believe that the bank has every reason to take

a personal interest in the successful administration of an estate. Not only is the success of the institution itself dependent on the good-will of those for whom it acts, but the success of the officer in charge of the work of the trust department is based upon his ability to please the customers of the department, and likewise upon the successful handling of the matters entrusted to his care.

§ 497. Relation of Trustee to Beneficiaries

The fiduciary should be in confidential relations with the beneficiaries of a trust. It is the experience of officers in charge of trust departments of the various banking institutions, that the beneficiaries consult those officers with regard to many things not always within the scope of that particular trust. This often results in very friendly personal relations between the individual beneficiaries and the fiduciary, just as it would where an individual was acting as the fiduciary.

In view of the generally admitted fact that the majority of people would have greater confidence in the opinion of a bank or a trust company than in that of a private citizen, it follows that the individual beneficiary is more likely to consult with the officer in charge of the trust department in regard to his personal affairs. In all cases the transactions are between individuals. In other words, the bank or the trust company is of necessity represented by its trust officer, an individual.

Another answer to the criticism that an institution lacks personal interest in the matter is that where such personal interest is greatly to be desired, and the testator does not believe that the bank or the trust company would possess sufficient personal interest, and the extra expense does not deter, he may appoint a co-executor. For instance, he might appoint his wife or son or friend as a co-executor. Banks and trust companies often advise the appointing of a co-executor, espe-

cially where a testator is engaged in an active business which is to be continued after his death. It is then advisable to appoint as a co-executor or trustee a responsible person familar with the particular business in which the testator was engaged during his life and which is to be continued after his death.

§ 498. A Corporate Fiduciary Will Keep Adequate Records

One of the very important and even essential duties of a fiduciary is keeping adequate records of all the transactions in connection with the administration and distribution of an estate. Probably anyone who has had any experience at all in connection with the administration of estates knows only too well how very inadequate the records that the average individual keeps would be. Lawyers have spent many hours and had much anxiety in trying to work out the accounting schedules from such records as the individual usually keeps. In one such case, which is typical of many, the executor kept whatever records he had in his check-book; in other words, he used the check-book as his journal, cash book, and ledger. There were innumerable cross-references from the stub side of the check-book to the deposit side, and vice versa. A clerk in the office of the attorney who represented the executor attempted to make up the accounting schedules. After several days' work resulting in his inability to prove the accounts, he gave it up. Finally the matter was referred to an accountant who proceeded at once to open a set of books, using the check-book as the source of information. It took considerable time to make up the books, but when that was done no difficulty was experienced in making up correct schedules for the judicial accounting.

It is well known that a bank or a trust company always makes complete, adequate, and correct records of all its transactions. The proper entries are made promptly at the time the transactions take place. The questions which are forever

springing up as to whether an item is an administration expense or a debt of the testator, or whether the charge should be made against income or principal, are not guessed at or decided by chance. They are decided by someone who is an expert and knows how they ought to be charged.

In the case of a bank or a trust company the records are subject to numerous official examinations, including in the case of a national bank in New York, the national bank examiners, official inspectors of the federal reserve bank, the clearing house, the state bank examiners, and the examination of its own directors, and are always subject to audit and examination by its own auditing department.

Being subject to all these examinations, of which those concerned have no advance notice, the assets and affairs of every estate for which the bank may be acting would seem to be extremely well guarded. There are, however, further safeguards, namely: (1) that all entries must prove every day, and (2) that the systems used by banks and trust companies contain every known check against error or wrongdoing.

§ 499. Caring for the Assets of an Estate

One of the many considerations that should be taken into account at the time when an individual is selecting an executor or a trustee, and a fact which is seldom if ever in the testator's mind, is the question of the facilities that the proposed executor has for caring for the assets of the estate. The offhand answer that most people would give to this question, is that the executor should rent a safe-deposit box. Sometimes no safe-deposit company exists in the locality where the executor maintains his office or place of business. If, however, the executor maintains an office in a large city, of course there are a number of safe-deposit companies ready to rent boxes to fiduciaries. But in this case the securities are not in a convenient and accessible place; at least they are not so accessible

as if the executor had them in his office at all times. A great deal of danger arises from this very situation, and there have been many cases where the fiduciary's accounts have been surcharged by reason of an alleged loss of assets of the estate because the executor lacked adequate means for safe-keeping the securities.

§ 500. Cases on Care of Funds

In one case an administrator explained a shortage by saying that his pocket had been picked and that thereby he had lost $1,000 belonging to the estate. He was compelled to reimburse the estate for the loss because the court considered that he was guilty of negligence in carrying the money around in his pocket. In some cases of loss, however, there is no negligence, and the fiduciary cannot be held personally liable.

In another case the administrator explained a discrepancy in his accounts by alleging that he had been robbed of $3,000 in cash. The facts showed that the administrator lived in the country some distance from any bank and that he had kept the money in his house until it was convenient for him to go to the county seat for the purpose of settling his accounts. He stated that on his way he was attacked by armed men and the money stolen from him. In this case the court held that there was no negligence by reason of the fact that it did not appear that the money was lost because of the administrator's failure to put the money in the bank immediately, but that the same kind of attack might have been made where there had been no such delay in bringing the money to a safe place.[1]

Sometimes executors and administrators have safes in their offices where they are in the habit of keeping securities or money. This is an unsafe place in which to keep anything of value, and there are cases where such safes have been broken

[1] Lehman v. Robertson, 84 Ala. 489.

into and the contents stolen. In one such case the executor kept money in an iron office safe, such as is supposed to be ordinarily proof against burglary and fire. However, thieves entered the office during the absence of the proprietor and blew open the safe and stole some money belonging to an estate. In this case the court did not hold the administrator personally liable for the reason that there had been no negligence. The court thought that in view of the fact that the money had been placed in a safe the administrator had used due care.[2]

In another case the assets of an estate consisting of cash were kept in a trunk in the house of the administratrix. Sometime during the course of her administration of the estate, a thief broke into the house and the money was stolen. The court held that this was gross negligence and that the accounts of the administratrix should be surcharged.[3]

It may be said that these losses are not always honest and that in some cases the fiduciary has not been true to his trust and has used the money for his own purposes. However, there can be no doubt that there are losses of the nature described in the several cases cited.

§ 501. How a Corporate Trustee Keeps Funds

If a bank were acting in any of these various fiduciary capacities, such occurrences could scarcely happen. Most banks have very adequate facilities for taking care of the assets of an estate. They maintain vaults which are actually burglar-proof, in the construction of which every known modern device to prevent breaking into has been used. In addition, the vaults are guarded at all times of the day and night so that it is practically impossible for bank vaults to be entered. Furthermore, there is no reason of inconvenience—such as in the case of an individual whose place of business or residence is far removed

[2] Stevens v. Gage, 55 N. H. 175.
[3] Cornell v. Deok, 6 Hun. (N. Y.) 22.

from a safe-deposit vault or a bank—why the bank should not immediately put the assets of an estate into its vaults.

§ 502. How a Corporate Fiduciary Keeps Informed as to Securities

Many times in the handling of the assets of an estate, especially where there is a trust, it is helpful to be in a position to know what is happening with regard to the corporation whose securities form the assets of the estate. In the case of a bank or a trust company acting in the fiduciary capacity, all this information is gathered through various means, including the daily newspapers and various services such as the Standard Statistics, the Red Book, and others. A careful index is maintained of all the securities held in the trust department of a bank or a trust company, so that ready reference may be had to ascertain whether the bond has been called, or the stock has conversion privileges, or rights to subscribe to stock have been issued; what the dividend rates are; what the status of bonds with respect to income tax is; and all the other innumerable questions that continually arise in handling securities. It would be unfair to expect that any individual, unless he made the handling of an estate his sole business, should have even a small part of this information, and yet every bit of it is information that should be had in order to handle the assets of an estate in the way which will produce the best results for the beneficiaries named in the will. If an individual fiduciary should try to obtain this information, even if he were willing to devote the necessary time to it, he would have to subscribe to the various services to collect this information. This would cost the estate a good deal of money because these services are very expensive. The bank or the trust company subscribes for these services but no charge is made against the estate for that, as in the case of several of the other items mentioned in another section. It is just part of the bank's overhead.

§ 503. The Difficulty of Securing Honest Administration

If you were about to make your will and you had before you the problem of selecting a proper executor or trustee, what would be the qualification that you would consider the most important? Would it not be that of honesty? In other words, would you not demand that your executor or trustee be someone whom you believed to be so thoroughly honest that every cent of the money or property that you left would go to the persons intended by you, so far as it was in the power of your executor to bring it about? It is unfortunately too true that when one deals with individuals, one must encounter the danger due to the frailties of human beings. This is not to say that all human beings are dishonest, but one never knows what individual will fall under a given set of circumstances. "To err is human." For example, it has happened all too frequently that the testator has appointed someone in whom he had the utmost faith, who, however, actually stole the funds of an estate, or used them to his own advancement to the detriment of the estate, or speculated with them in some way and lost money that should have gone to the family of the decedent.

§ 504. Cases in Point

Many pathetic cases of this kind are on record. In a case in point, the executor of an estate was a man named Sirins. Among the assets of the estate were shares of stock in a corporation which just prior to his appointment had increased its capital stock. The estate was therefore entitled to subscribe to a certain portion of the new stock. It happened that there was a decidedly good market for the stock and therefore it was valuable, and the rights could have been sold at an advantage to the estate. Instead of doing this, he purchased in his own name the stock to which the estate was entitled and paid for some of it out of his own pocket and for some of it out of the

funds of the estate. In this case the court held that the executor "had no right to make a profit to himself in any such way; no trustee could be allowed to make a profit out of his trust," and the court compelled him to surrender to the estate the shares he had subscribed for so that the beneficiaries gained whatever advantage there was in subscribing to the stock.[4]

In another case an absolutely dishonest and fraudulent administrator was appointed by the courts. Of course, the court at the time had no reason to believe the administrator dishonest. The facts were as follows: A certain man died leaving a widow and two infant children. At the time of his death, the testator was in the jewelry business. He had between $25,000 and $30,000 invested and was doing a prosperous business. The widow consented to the appointment of the administrator, who was a brother-in-law, and allowed him to run the business. It was not long before the brother-in-law had appropriated so much of the profits of the business that he was ready to buy it himself and set up his own business. Up to this time the brother-in-law had never been engaged in the jewelry business and in fact knew nothing of it. His previous occupation had been that of a street-car conductor. Due to the activities of a special guardian, appointed by the same surrogate's court that looked out for the interests of the infants, the wrongful acts of the administrator were detected and when a thorough investigation had been made, the court surcharged this particular administrator with the sum of $5,000.[5]

§ 505. Why a Corporate Fiduciary Cannot Be Dishonest

If you would be absolutely sure that no dishonesty enter into the handling of your estate, you should by all means appoint a bank or a trust company, as in the nature of things it

[4] Turnipseed v. Sirins, 32 S. E. Rep. 423.
[5] In re Feierabend, 38 Misc. (N. Y.) 524.

cannot be dishonest. Its employees are all under bond. The bank's resources are available for any loss incurred through the dishonesty of its officers or employees. The funds deposited with the state superintendent of banks of the state in which the trust company or the bank has its interests, are also available to make good any loss incurred through dishonesty of the officers or employees. As a matter of record, no losses to beneficiaries of an estate have ever been incurred by reason either of the dishonesty of an employee of a trust company or the failure of a trust company or a bank. It should always be kept in mind that the funds and other assets which are in the hands of the trust department of a bank are trust funds, and therefore the general creditors of a bank in case of insolvency have no lien whatsoever upon them. As a matter of fact, the assets, such as stocks, bonds, and mortgages, can be returned to the estate in kind at any time that the trust should terminate, or if a new trustee should be appointed, the funds can be turned over to the new trustee. As to the cash which is in the hands of the trustee, while this may be used in the commercial department of the bank, yet it is safeguarded, as has already been pointed out, by the deposit of securities with the superintendent of banks, and in the case of a national bank, by the additional deposit of securities of a market value equal to the cash deposited in the commercial department. The last mentioned securities are deposited with the trust department of the bank, and trust department creditors would have the first lien thereon.

When a bank or a trust company acts as fiduciary, loss to an estate could arise only in case securities purchased in accordance with the law decreased in market value, so that upon distribution less was obtained for the investments than was paid for them. If this possibility exists when a trust company or bank is acting, how much more likely is loss to occur in this very way when an individual is the executor. Always

remember the bank's opportunity for obtaining information as compared with the individual's.

§ 506. Summing Up the Qualifications of a Fiduciary

In conclusion, therefore, one about to make his will should take very great care in the selection of the person who is to administer his estate. He should first be sure that the individual is thoroughly honest; he should know that he is capable and has had business experience; he should be sure that he has sufficient time to spend on the work of administering the estate and that he would give it first, not secondary, attention. The testator should also bear in mind the necessity of choosing someone who would be in a position to safeguard properly the assets of the estate. The executor, in addition, should possess facilities for obtaining information with regard to investments for the estate; he should be competent and willing to maintain full records, so that at the time the accounting is to be rendered the information would be readily at hand. The executor should also be one who would act impartially and fairly, so that if there should be conflicting interests or family jealousy, he would not be swayed in favor of either party. And then, when the testator has found a person with all these qualifications, he must take into consideration the question of economy. If his estate is large, will his executors have to hire special office space and clerks in order to administer the estate?

It would appear that a trust company or a bank is the only possible executor in which all of these qualifications are present. We therefore urge that if the estate is of any size at all, the testator carefully consider the advantages which a bank or a trust company offers over the individual in fiduciary capacities. It is not believed that, if any man owning property would consider this matter in a cold-blooded business way and decide accordingly, there would be any doubt but that he would choose a trust company.

Review Questions

1. Why are family differences likely to arise in settling an estate? Can an executor safely advance legacies? If there is dissension, what effect has it on the executor's duty?
2. What harm may an incompetent executor do? How may a dishonest executor defraud the legatees?
3. Can a corporate fiduciary be incompetent or dishonest? When a corporation is executor, with whom do legatees come in contact?
4. Why is a bank or a trust company interested in pleasing all legatees? Is it best to appoint one or more co-executors? Is there any reason against such appointment?
5. Are individuals acting as executors likely to keep careful records? Are banks and trust companies? What inspection is given banks and trust companies in your state?
6. How should an individual executor care for funds, securities, and other articles of value? How does a financial institution care for such things? What advantage has the financial institution?
7. If an executor cares for the assets of an estate as carefully as he does for his own property, will he be liable for losses?
8. How do banks and trust companies care for the assets of an estate?
9. Why do banks and trust companies keep informed as to securities? How do they do this? Why is it difficult for an individual to keep as well posted?
10. Is it easy to secure absolute honesty in individuals? Why is there an advantage in this respect in selecting a corporate fiduciary?
11. If an individual executor is dishonest, what remedy have the legatees? Does this always result in replacing the losses? Why not?
12. Why is it that trust funds practically cannot be lost if the executor is a banking institution? If a bank becomes insolvent, can its creditors reach trust funds? In what one way can trust money be lost?
13. Summarize the qualifications an executor should possess. Compare as to each the qualities of an individual and the same qualities as shown by a financial institution.

CHAPTER LIX

CUSTODIAN, AGENT, AND DEPOSITARY

§ 507. Sundry Fiduciary Relations

Besides the many fiduciary capacities in which a bank or a trust company may act, there are other capacities of a more or less confidential relation in which individuals call upon banks and trust companies to act for them. Among these are the functions of custodian, agent, and depositary. In the following pages some of these relations will be considered.

§ 508. Banks and Trust Companies as Custodians

Banks and trust companies in many cases serve individuals as custodians. A custodian is one who has the care of something, or one who safely keeps something for another. Where a bank or a trust company acts as custodian, it keeps securities and other valuables safely for individuals, fiduciaries, corporations, and even for other banks. For the most part, what the bank really safeguards are securities, including stocks, bonds, real estate mortgages, and sometimes sealed packages that are put into the custody of the bank or the trust company. There are many advantages in this service. At the same time, it may be moderately profitable for the bank or the trust company rendering it. The fees are small, so that the person whose securities are thus safeguarded is charged but a nominal sum, usually 1/10 per cent of the par value annually, or the charge may be based on the income.

Where the services of a bank or a trust company are used in this way, the necessity of renting a safe-deposit box is entirely eliminated and expense is saved. The securities are al-

ways available at any time upon the written instructions of the person who owns them or upon his calling personally at the bank or the trust company and requesting their delivery. He may also appoint an agent to act for him. If the agent has been properly authorized and his authority is filed with the custodians, they will honor his orders. This service is particularly valuable where the owner of the securities is a person who travels much or does not have occasion to go to the bank frequently. It is also valuable to one residing far from the bank or the market where the securities are dealt in.

One may readily realize the value of this custodian service to an administrator, executor, or trustee under a will, or to a guardian of an infant, or to a committee of a person. In such cases there are almost always securities to be cared for. The fiduciary not only has to rent a safe-deposit box, but he has the inconvenience of having to go to it whenever coupons are to be cut or bonds mature, nevertheless the duty still rests upon him to care for the securities with all the diligence of which he is capable. This means that he must cut the coupons on the day that they are actually due, or present the bonds on the day that they actually mature, and not just whenever it is convenient for him to attend to them. The safe-keeping of the securities belonging to an estate is one of the things that a fiduciary may well delegate to a bank or a trust company.

§ 509. Banks and Trust Companies as Agents

Another phase of the work of acting as custodian in a larger and more useful capacity is where the bank or the trust company acts as agent for an individual, another corporation, or another fiduciary. If the bank or trust company is the agent, it can of course do whatever is delegated to it to do, so far as the act is legal. Any person of sufficient intelligence may act as agent. A corporation as agent may do the things that an individual may do so far as it is authorized by its char-

ter. However, it is important to know that the agent is a person of responsibility and accountability. Of course, if a bank or a trust company is appointed, there is no question as to either of these qualifications.

The matter of making the appointment is simple and requires only a letter of appointment, including in it sufficient instructions to enable the agent to act. The acceptance of the agent is also required. The appointment, however, may be by virtue of an agreement or contract. The agreement may be simple or it may be complex, depending upon whether the principal gives detailed instructions to the agent. How complex or how simple the arrangement shall be is largely dependent upon how many matters the principal wishes the agent to handle for him. The scope of the duties of an agent is practically unlimited, but from the standpoint of the kind of agency that we are discussing here, namely, agent with respect to the handling of the property of individuals, the duties are fairly well defined. Among the many cases handled by a bank or trust company as agent; the following are fair examples:

1. Banks or trust companies will safely keep securities or other personal property as they would in acting as custodian of the property.

2. They will collect all the income that may fall due within the period of their agency or any passed due income at the time that they take up their duties as agent, provided of course the money is legally collectible. In conneciton with the collection of income, it is fair to say that the income will be collected and credited to the individual's account exactly on the day due, and not at some convenient time, as the individual when acting for himself would be very likely to do.

3. As agent they will collect the principal on bonds when they mature.

4. They will invest and reinvest the principal from time to time, either in accordance with the instructions given by the

principal at the time of appointment of the agent or in accordance with periodical instructions, as the principal may see fit to give them, or if the arrangement between the principal and the agent so provides, they will invest the money at their own discretion.

5. The agent will report upon the condition of investments, that is, as to the condition of the companies in which funds are invested from time to time.

6. They will obtain information in regard to called bonds, rights to convert bonds into stock, rights to subscribe to new issues of stocks or bonds, increased, reduced, and passed dividends, the reasons for the appointment of receivers in particular cases, the appointment of protective and reorganization committees, sinking funds and the payment of assessments. Of course the bank or trust company has facilities for obtaining this information much more easily than an individual would be able to do.

7. The bank or the trust company will attend to the payment of instalments on subscriptions to new issues of stock or bonds, and the transfer of stocks and registered bonds.

8. A great deal of business of this character is traceable to the fact that people in this country like to travel. Sometimes they are away for many months and they have to leave their affairs in the hands of others. There is no safer or better agent than the bank or the trust company where the individual has his account. Most of these have the facilities for attending to the various matters that the individual would want to have looked after. For example, it may be that the individual has taxes payable during the time of his absence. If he has appointed the bank or the trust company as his agent, it will make these payments and charge his account for the amount. Similarly, it may be that interest on a loan or a mortgage comes due during the period of absence and again the company, provided it is acting as agent, will pay the item and

charge the account. The same may be said of insurance premiums, rent, storage charges, and even allowances to designees. Strict account will be kept of all of these items, so that when the person returns, the bank or the trust company can give him full information both for himself and for the purpose of making up his income tax return, which in itself is of great value and assistance to the individual.

9. They will deliver securities which they are holding in safe-keeping to brokers in accordance with whatever instructions they may have received or in accordance with the agreement which prevails between the bank or the trust company as agent and the principal. They will, of course, receive securities for the account of the principal and put them in safe-keeping.

10. They will care for real property and do everything that the principal himself could do, collecting rents, making repairs, making new leases, attending to the payment of taxes or assessments, renewing insurance, paying the premiums, and carrying on negotiations for purchase and sale of real property. From time to time, in accordance with whatever arrangements are made and in accordance with the fees that are paid for the services, the banks or the trust companies make periodical statements—monthly, quarterly, semiannually, or annually. These statements can be used as indicated above not only for the benefit of the individual himself, but also for the purpose of assisting him in making up his income tax returns, both state and federal.

§ 510. Banks and Trust Companies as Fiscal Agents

Besides acting as agent for individuals in the capacities mentioned above and in the manner indicated, a bank or a trust company may act as fiscal agent, that is, it may represent a corporation in the payment of corporate obligations, such as the interest represented by coupons attached to bonds. This

class of work becomes a necessity when a corporation gets out an issue of bonds. Most of the bonds thus issued are known as "coupon bonds," that is to say, the interest payments are evidenced by coupons which are attached to the bonds, and are collectible upon presentation of the coupons at the office of the fiscal agent. The coupons usually fall due semiannually; sometimes, however, they fall due anually. The holder of the bonds detaches the coupon and presents it to the paying agent or fiscal agent of the corporation either personally or through his bank. The issuing corporation appoints the interest periods in the mortgage or instrument creating the bond issue. It provides the paying agent with the total amount of interest falling due at a particular time.

When the coupons are presented to the paying agent, official checks are made out to the person or his agent, such as another bank, presenting the coupons. The coupons are then canceled and held until all of the coupons of that particular date have been paid. Then they are either canceled and placed in the vault or burned, after which an incineration or cremation certificate is issued to the effect that coupons bearing certain numbers have been thus destroyed. The certificate is signed by an officer of the bank and by an officer of the corporation for whom the bank has been acting. The certificate is witnessed by at least one other employee of the bank who has seen the coupons actually destroyed. This service is an extremely important one from the standpoint of a corporation having coupon bonds.

The bank or the trust company has all the machinery to handle such matters, whereas a corporation not in the banking business would have to instal special accounting systems and to train clerks especially for the work, which would make it quite an expensive matter for the corporation, whereas when the bank handles these matters it is only part of its routine work. Instead of acting for one corporation it acts for a great many.

There are coupons coming due throughout the year at frequent intervals, so that at no time is the bank's coupon payment department—the department that acts as fiscal agent—without considerable business. Of course, where a corporation is acting as its own fiscal agent, it would be busy only once or twice a year, depending on how often its coupons became due. Clerks would have to be taken from their regular duties and trained in this work.

The fiscal agent not only pays coupons, but pays maturing bonds as they fall due, or note issues, or any other corporate obligations. It may also pay dividends on stock, in which case it sends the checks to the various persons who are stockholders as of a certain date. This date is set by the board of directors as the day when the books shall be closed. The payment of dividends includes in general the making out of a check for the proper amount of dividend and forwarding it to the individual at the address which appears on the stockholders' ledger or upon a certified list of stockholders.

The fiscal agent work includes the filing of the government ownership certificates which the fiscal agent has received from the owners of the bonds as the coupons were presented from time to time. The filing of these ownership certificates must be done on the 20th of each month following the month in which the payment of the coupons was made, and the return is made on a special form provided by the government. At the end of the year an annual report must be made to the sorting division of the revenue office, which summarizes all of the monthly reports which have been made. The charges for this work are ordinarily ¼ per cent on the total amount of money paid on any interest period, or the deposit of the amount of money, without interest, with the fiscal agent thirty days in advance.

Where the fiscal agent is paying dividends, the fees are in accordance with the number of checks that are to be issued and

vary in proportion with the total number; for example, if there are only one thousand checks to be sent out the charge would be proportionately higher than if there were several thousand.

§ 511. Banks and Trust Companies as Depositaries

A depositary is a person or a corporation with whom property (money, securities, or other things of value) is deposited. There is no provision of law designating who may act in this capacity, but in most instances banks and trust companies are selected for this work. The creation of the relationship may be by the actual deposit of the property, or by a letter or special agreement. Of course the duties that devolve upon the depositary vary in accordance with the arrangements made, that is, in accordance with the terms of the agreement, if there is one, or the letter of instruction, if that is the way in which the relationship has been created.

Where the relationship is that of a simple depositary, then of course the bank or the trust company would hold the property as bailee, that is, it would be responsible to the person who owned the property merely for due diligence in the care of the property, but would not be held responsible for its absolute safety. Where a bank or a trust company is acting, however, while the legal obligation is not different from that where an individual is acting, yet, because of its reputation and standing in the community, it would assume absolute responsibility.

§ 512. Depositaries Under Escrow Agreements

Where, however, the bank or the trust company is acting as depositary under an escrow agreement, there may be many and complicated conditions. Holding property under an escrow agreement means in simple language that the property is being held subject to the fulfilment of certain conditions which are set forth in the agreement. A simple example of this would be where a person had contracted to buy a piece of real prop-

erty. Of course he would want to have an opportunity of searching the title to ascertain that he was going to get a marketable title as provided in the contract. At the same time the seller might feel that he wanted to be sure that when the purchaser was satisfied as to the title, he, the seller, would get his money. He therefore would insist that the purchase price be deposited with some disinterested person, bank, or trust company, preferably either of the latter two because of their financial responsibility. An agreement of this kind would have to provide that when the bank had been satisfied by reason of a title company's certificate that the title was in accordance with the contract, the money deposited with it be turned over to the seller. In many instances the conditions to be fulfilled are much more complicated, and the bank is called upon from time to time to watch the happening of many events.

It should be the policy of all banks and trust companies to insist that any escrow agreements be very carefully drawn with respect to defining the duties of the depositary. No bank or trust company or other depositary should be called upon to assume any responsibility other than the responsibility to turn over the property held in escrow when the specific conditions have been fulfilled. In order that there be no doubt as to when the conditions have been fulfilled, it should be clearly defined in the agreement what instrument or certificate is to prove to the depositary the fulfilment of the conditions. It should also be clearly stated what shall constitute a default and what is to be done with the property held in escrow if a default should occur.

§ 513. Depositaries Under Voting Trust Agreements

A bank or a trust company may also act as depositary under a voting trust agreement. This is an agreement entered into between the stockholders holding the majority of the outstanding stock of a corporation. It provides for the appointment

of certain named persons, usually stockholders, as voting trustees. The agreement usually runs for a number of years. This method of handling the affairs of a corporation is adopted where it is desired to continue a definite business policy over a period of time. If the policies of a corporation are subject to the changes that are likely to occur when the directorate is changed, it is sometimes harmful to business success. By creating a voting trusteeship this danger is eliminated.

An agreement of this character provides for the deposit by its stockholders of their stock with a bank or a trust company designated in the agreement. The depositary is instructed to issue voting trust certificates or deposit receipts. These may be and are bought and sold just as the stock certificates are. The depositary keeps records of all stock certificates deposited and of all transfers of the voting trust certificates or deposit receipts and acts as the transfer agent of them.

Whenever a voting trust certificate is presented for transfer from one owner to a new owner, the stock represented by such voting trust certificate must also be transferred. If the transfer agent of the stock is a different bank or trust company, as often occurs, then the depositary must send the stock to the transfer agent and have it transferred into the name of the new owner. Then the depositary will issue new voting trust certificates to the new owner or owners. The arrangement has the same facility of transfer of title as stock certificates. The new owner without the necessity of physically signing the voting trust agreement automatically agrees to the terms thereof. In this way any change of policy is avoided without hindering any stockholder from disposing of his stock if he can find a purchaser.

§ 514. General Duties of a Depositary

Acting as depositary for bondholders' committees, reorganization committees, and the various other protective com-

mittees which spring up the minute a corporation gets into financial difficulties, the duties of the bank or trust company are essentially merely to receive the bonds, notes, stock, or other obligations and to issue receipts therefor. The object of depositing the bonds, notes, stock, or other obligations is, of course, to put them under the control of the particular committee so that they may have the strength of many instead of the few. Again, as in the case of the voting trust certificates, these deposit receipts may be traded in if one can find a purchaser, which of course is rather difficult because of the financial condition of the corporation.

Often the duties of the depositary are much more difficult and numerous than as outlined above. Among other things, the depositary is frequently called upon to advance money to defray the expenses of the committee, in which case the depositary insists upon being given a prior lien on the particular securities deposited with it, or to take an active part in devising the reorganization plan.

If the plan is finally adopted, the depositary has the duty of carrying it out. These plans often are complicated and vary with the innumerable circumstances of the different cases. Sometimes the depositor gets back some bonds, some preferred stock, and some common stock. Then he may be called upon to pay an assessment. The holder of a first mortgage bond usually fares the best, although the holder of an equipment trust obligation or a bond issued under a mortgage on a terminal or a particular piece of property, is in an advantageous position. The holder of stock, especially common stock, usually fares the worst. He is the one most likely to be assessed.

Banks and trust companies are best able to act in any of these capacities because they are trained to the work and because of their accessibility and financial responsibility. It is not easy to see how such work could be handled otherwise than by a bank or trust company.

Review Questions

1. What fiduciary capacities in which a financial institution may act are mentioned in this chapter?
2. What is a custodian? What kind of property do banks and trust companies take charge of? May an individual executor employ a custodian of this kind?
3. To what extent may a bank or a trust company act as an agent? What gives it this power and what limits it? What is the advantage of such an arrangement? What character of duties is delegated to banks and trust companies in this way? What kind of information will such agent secure? How are travelers served? To what extent will such an agent care for real property?
4. What is a fiscal agent? What is a paying agent? Why is a bank or a trust company peculiarly fitted for such duties?
5. What is a depositary? Does a bank or a trust company assume more responsibility than an individual bailee?
6. What is an escrow agreement? Why should escrow agreements be drawn with great care?
7. What is a voting trust agreement? What does the depositary under such agreements have to do? How is stock under such an agreement transferred?
8. What are the general duties of a depositary? If the depositary advances money, how does it protect itself? Why are the duties of a depositary sometimes very difficult?

CHAPTER LX

A BANK OR TRUST COMPANY AS CORPORATE TRUSTEE FOR BONDHOLDERS

§ 515. Corporate Trustee

A corporate trustee is a trustee acting under an agreement between a corporation and the purchasers of its obligations. Generally speaking, the corporate trustee has the same legal obligations that any other trustee has. The obligations of the corporate trustee are defined by the instrument which creates the trust just as in the case of a personal trustee.

The corporate trustee is charged with the legal title to property of which some individual or corporation has the equitable title. The trustee does not always have the immediate custody of the property, as for example, where the corporate trustee is the trustee under a mortgage. In such case, it would hold the mortgage agreement showing that, as trustee, it had the legal title to certain property belonging to the corporation. In some cases it would have the property in its possession, where personal property such as the securities of another corporation were the subject of a trust; but if the property were equipment, such as cars or locomotives, obviously it could not have physical possession. In this case, the cars or locomotives or whatever the object of the trust might be, would have painted thereon words showing that the property was the property of the trustee. The legend would probably be somewhat as follows: "First National Bank, Trustee and Owner."

The corporate trustee must see that the terms of the agreement are carried out. It must, in certain cases explained fur-

ther on, act for the holders of the obligations. It certifies as to the genuineness of the instruments issued under the terms of the agreement.

§ 516. Individual and Corporate Trusteeships Compared

In the early days of corporations and the issue of corporate obligations it was the custom to appoint one or more individuals as trustee or trustees. Usually one of the individuals would be a lawyer. Now, however, it very seldom happens that an individual is appointed in this capacity. At first, trust companies were appointed; since the amendment to the Federal Reserve Act both trust companies and banks may be and are appointed. Obviously either the bank or the trust company is better qualified for the position than any individual, no matter how capable. The financial standing, the impartiality, the superior training, the greater facilities, the greater accessibility, all of these and many other reasons make the bank or trust company better qualified.

§ 517. The Purpose of a Trust Agreement

The object of these various trust agreements is the same in all cases, namely: to raise money to carry on some part of the corporate business. Usually the amount desired to be raised is so large that no individual or bank would be able to lend the money, however good the security might be. On the other hand, by inducing a large number of people to participate in a loan, the problem of raising several millions of dollars becomes, in ordinary times, a comparatively simple one. As evidence of the participation of a given person in the loan, a bond or note, depending upon the agreement, is given.

Our Liberty bond issues are an excellent example of how a large sum of money can be readily raised by means of bond issues. In the case of a corporation other than a government, however, it would not be possible to raise such enormous sums.

§ 518. The Usual Forms of Trust Agreements

The trustee is appointed by virtue of the trust agreement; all the powers exercised by the trustee are derived from this agreement; and all of the duties are fully set forth in it. There are a great variety of trust agreements. In fact it may be said that no two such agreements are alike in detail, although in a general sense there are many similarities. Some of the more commonly known classifications and titles by which different trust agreements are generally designated are: first mortgage, general mortgage, collateral mortgage, and so on *ad infinitum.*

In order to understand how the trustee acts and what its duties are, it is necessary to know what the more common of these classifications imply.

A *first mortgage bond* is a first lien on whatever property is the subject of the mortgage, such as, in the case of a railroad, the right of way. As one would readily imagine, a first mortgage means that the lien is prior to all other liens. It is, therefore, a very safe kind of investment and if the debtor corporation is even passably good, these bonds will ordinarily sell at a premium. The yield will naturally be comparatively low. Often other wording is added in the name of the bond, as, for example, "First Mortgage Gold Bonds." These additional words really add nothing to the security and are used solely as a means of attraction to the buying public. This is a case where there is something in a name.

A *refunding mortgage* is issued to take up some expiring obligation and may be good or not depending upon the soundness of the issuing corporation and the obligation which it replaces.

A *general mortgage* is usually a pretty fair kind of investment because it is a lien on all the property belonging to the corporation. However, there may be any number of liens against specific property which would be prior obligations. In

this case, the general mortgage would probably not be an absolutely safe investment.

A *collateral mortgage* is a mortgage, the security for which would be the securities of another or the same corporation. If the securities were of the same corporation, they would, of course, be of a different issue. The securities thus pledged might be either stock or bonds. If they were bonds, the safety from an investment standpoint would ordinarily be greater.

A *debenture bond* is merely a promise to pay and is not secured by a lien on any special property. It is safer than preferred stock because it is a legal debt of the corporation, and its interest is not conditioned on profits.

An *income bond* is somewhat like a debenture in that it is a mere promise to pay, but it differs in that interest is payable only if and when earned. It, therefore, has some of the characteristics of preferred stock. Preferred stock is often cumulative, while, as a rule, income bonds are not cumulative, nor are they very desirable.

An *equipment trust* is usually in the form of a note issue. The security behind an equipment trust is, as the name implies, some part of the equipment of the corporation issuing the obligation. This kind of security is used by railroad corporations in the majority of cases, and the equipment pledged consists of the cars or locomotives. The holders of these obligations are in an advantageous position in the case of a default either on the notes themselves or on any other obligation because they can say that unless their interest is paid, they will foreclose and take the equipment. The cars or locomotives must be identified. For this reason the trustee causes the fact of his own legal ownership to be painted or stenciled on the property.

A *terminal mortgage* is a mortgage on the terminals of the railroad, if the issuing corporation happens to be a railroad.

§ 519. The Legal Effect of Trust Agreements

It should be remembered that stock is an evidence of ownership and is never due or payable by the corporation until the corporation is dissolved. One cannot, therefore, foreclose on stock. A bond is a promise to pay at a future time, either fixed or determinable. Therefore, at some future time the corporation will have to meet its obligation. Of course, there are many more kinds of corporate obligations; but for our purposes those herein described will serve to give the reader a general idea of the subject.

The instrument by which these different kinds of issues are created and by which the trustee is appointed is known by different names. When real property is mortgaged, the instrument is called a "deed of trust." When personal property is pledged, the instrument is known as a "trust agreement." If the issue is a debenture or an income bond, the instrument is called an "indenture" or a "trust indenture." In general, however, these instruments are similar. The main object in each case is practically the same; namely, the creation of a legal relation between the corporation, the trustee, and the purchasers of the obligations. The legal obligation in each case is that the corporation agrees to pay the holder of its bonds or notes the face amount thereof at the time named therein and interest at a certain rate. The agreement also sets forth the duties of the trustee, including what the trustee is to do in the case of a default by the corporation in any of its obligations or promises. It also sets forth any provisions with regard to the creation of any sinking fund or means of retiring any of its bonds before maturity.

The instrument is an important document and a difficult one to draw. Only a lawyer familiar with corporation law should be entrusted with the work of preparing these agreements. The trust officers of banks and trust companies should familiarize themselves as fully as possible with corporate trust

agreements in general. Where an institution is appointed a trustee under an agreement, the provisions of the particular agreement should be carefully studied so that the officers may be familiar with the duties the bank or trust company has assumed. An analysis should be made and preserved for future reference so that when a question is raised the information will be at hand.

§ 520. Investigation of the Offering

Of course, the first thing is to secure an application from the prospective customer. This having been accomplished either by solicitation or otherwise, the whole matter must be investigated very carefully, for it is the duty of every trust officer to see to it that his bank does not represent an organization whose membership is not thoroughly reputable, nor one whose only object is to unload its securities on the public. Hardly a day passes in the history of a large bank or trust company without its receiving an application to act as trustee for some concern which no institution desirous of maintaining a high reputation in the community could afford to represent. Even with the greatest care it is easy to err, either by being too lenient or by being overcautious. Of the two dangers, it is better to err by being overcautious. Each application should, therefore, be considered on its own merits. The elements which are most important are:

1. What is the personnel of the board of directors and officers and their credit standing?

2. Is the enterprise practicable? What has been the previous history of similar enterprises?

3. Are those who are to manage the enterprise skilled business men or is this their first experience?

4. Is the proposition legal?

5. What are the plans for selling the issue? Who are the brokers going to be? What equipment have they for putting

the issue out? Are their methods approved? What is their standing?

At this time the following papers are to be filed with the institution which is asked to act as trustee:

1. A copy of the certificate of incorporation, certified to by the secretary of state where the corporation was incorporated.
2. A copy of the by-laws of the corporation, certified to by the secretary of the corporation.
3. A certified copy of the minutes of the first meeting of the stockholders, to prove that the corporation has actually commenced business.
4. A certified copy of the minutes at which the issue was authorized and the appointment as trustee was made.
5. Specimen signatures of the officers of the corporation authorized to sign the issue.
6. Certified copies of the form of bond or certificate which is to be issued.

If the certificate of incorporation or the by-laws have been amended at any time, copies of the amendments should also be filed. The agreement by which the issue is created and by which the trustee was appointed should be carefully examined, not only by the trust officers, but also by counsel for the institution.

After the trust committee of the proposed fiduciary is fully satisfied as to the soundness and desirability of the application, it is in a position to make arrangements with the applicant as to what the fees for trustees' services will be. (See § 525.)

§ 521. Examination of Property and Securities

The foregoing section outlines the preliminary work of the trust officer. After all these things have been satisfactorily

taken care of, the trust officer is in a position to work on the trusteeship itself. First of all he should make the analysis referred to in § 520. Then he should examine the trust property to see that it agrees with the description contained in the trust agreement. Of course, if it is real property he cannot make a physical examination but he should examine the title papers. This is a part of the work on which the advice of counsel for the trustee should be sought and relied upon. The counsel will then render an opinion as to the validity of the title. If the subject matter of the trust is real property, the trust deed must at once be recorded in the proper office of the state and county where the property is located.

The next step is to examine the issue itself; this includes the comparison of the bonds or notes with the original trust agreement. Obviously, it would be impracticable to compare each bond or note with the original. Comparisons are made by picking at random about every fiftieth bond or note and comparing it with the original. Then the bonds or notes are authenticated by the trust officer and his assistants. This consists in signing the certificate usually on the back or at the foot of the bond or note. What the trustee certifies to, is that the particular certificate is genuine. The customary wording is as follows: "This is one of the bonds described in the within mentioned trust deed."

The issue is then ready for delivery. Delivery may be made *en bloc,* that is to say, the entire issue may be delivered at one time; or it may be made in instalments, whichever the issuing corporation and its bankers have agreed upon. Upon delivery either directly or through the bankers, payment should be made to the corporation whose issue it is.

§ 522. Provision for Sinking Fund

Frequently it happens that the trust agreement or deed provides for a sinking fund. This, of course, means that a

fund is to be set aside for the purpose of redeeming the issue either at maturity or prior thereto. Where the trust instrument contains this kind of a provision the duty falls upon the trustee to see to it that the fund is set aside in accordance with such provision.

The terms of such provisions may and do vary considerably. It may be provided that a certain amount of cash be set aside each quarter, or semiannually, or annually. If the sinking fund is to be created for the purpose of redeeming the issue at maturity, then the trust instrument will most likely further provide that the trustee invest the cash; but if the sinking fund is to be used to redeem a part of the issue each year, the cash is likely to be held and lots are drawn to ascertain which bonds or notes are to be retired. Usually where bonds are called for redemption prior to maturity, they are called at a premium of one or more points.

The obvious reason for providing for a sinking fund is to add attractiveness to the issue by adding safety to it and thereby giving the issue a greater marketability. Of course, an issue with a wide and ready market is more easily sold than one with a poor market. Even if the trust agreement makes no provision for a sinking fund, sound financing demands that the corporation set aside sufficient money to redeem the issue at the maturity date. However, unless the trust agreement so provides, there is no legal obligation resting upon either the corporation or the trustee to do so.

§ 523. Trustee's Action in Case of Default

A properly drawn trust agreement always sets forth what the trustee is to do in the case of a default in any of the terms of the agreement by the corporation. In many of the agreements the trustee need do nothing until called upon by a given number of the holders of the issue, and then only if the holders of the issue indemnify the trustee. It is important from the

standpoint of the trustee that the agreement contain a provision of this character. If this provision were omitted the trustee might find itself obligated to bring an action to foreclose a mortgage without any assurance that it would ever get back the money it would cost to conduct the suit. If the proper number of the bondholders call upon the trustee to bring an action and indemnity satisfactory to the trustee or in accordance with the trust agreement is provided, the trustee must commence an action to foreclose the mortgage in order that the property which is the subject of the trust may be sold and the proceeds used, as far as they will go, to repay the holders of the bonds or notes.

In this connection protective committees are usually appointed. These committees are made up of the holders of the larger amounts of the bonds or notes. The object of these committees is to protect the holders of the particular issue they represent. In this manner, if there is any reasonably successful chance of re-arranging the financing of the corporation which has defaulted, much money is saved, and many corporations have thus been saved for useful purposes. Much more on the subject of financing and refinancing corporations can be obtained from the many excellent works on corporate finance.

§ 524. Paying the Bondholders

A corporation, though solvent on the due date of the issue and able to pay the entire issue at that time, might at some later date become insolvent. All those who presented their bonds promptly would be paid. Those who had been slow in so doing would lose their money or at least be put to considerable trouble and probable expense if the trustee had failed to secure on the due date funds with which to pay all the bonds. As the trustee is trustee for those who are slow as well as for those who are prompt, this important duty should not be overlooked. No

matter when the bonds may be presented after the maturity date the money should be in the hands of the trustee.

The next step after having procured from the corporation the necessary funds with which to pay the bonds, is to receive the bonds as they are presented, to examine them, and to pay them. As the bonds are paid they should be canceled. When they are all paid or a large part of them, the best practice is to incinerate them and issue a certificate setting forth that bonds bearing certain numbers have been incinerated. This certificate is made by the trustee and is witnessed by a representative of the corporation and a representative of the trustee other than the officer who has executed the incineration certificate. (See Form 22.)

After all the cash to pay the bonds has been deposited with the trustee, the trustee may return the property which was the subject of the trust. Its duties—with the exception of paying bonds the holders of which are slow in making presentation—are then complete and the trusteeship has terminated.

§ 525. The Fees Paid the Trustee

Usually the compensation of the bank or trust company for acting as trustee is divided into three classes. There is one fee for accepting the trusteeship. This is based on the size of the issue, the number of pieces, and the denominations into which the issue is divided. For a small issue of $100,000 or less than $500,000 this fee would probably be $1 a bond, assuming that the denominations were of $1,000. If they were smaller, $500 and $100, the fee ought to be about 50 cents per bond. The fee in the case of an issue of $1,000,000 and up to $10,000,000 where the bonds are in denominations of $1,000, is usually 50 cents per bond. Above this amount the rate of the fee should be proportionately lower.

Another fee would be charged for the care of the sinking fund. The amount of this fee would depend upon the amount

of the sinking fund and on the duties of the trustee with respect thereto. The variety of possible duties of the trustee is so great that it is useless to suggest a basis for this fee. Each case must be determined separately. Usually it is a question of striking a bargain with the proposed trustee.

And lastly, another fee is frequently and properly charged upon the maturity of the issue. This fee is figured on a percentage basis, often ⅛ per cent; sometimes where the issue is small and the denominations are small, the fee will be at the rate of ¼ per cent. Another method of compensation upon the maturity of an issue is to require the corporation to deposit the principal amount of the issue thirty days in advance of the maturity date without interest. In addition to the fees that can be earned by the bank or trust company, it should be remembered that a deposit account will usually be opened with the institution by the corporation for which it is acting as trustee. The business is decidedly lucrative and in view of all the financing that is likely to be done in the near future, it can be truthfully said that the surface has as yet hardly been scratched.

Review Questions

1. What is it that determines the obligation or responsibility of a trustee? In such an arrangement, what title does the trustee hold? How is the ownership of personal property in the hands of a trustee evidenced?
2. Why are banks and trust companies better qualified to act as trustees than individuals?
3. What is the object of a trust agreement?
4. What is the instrument that creates such an agreement generally called? How are these classified? What is the function of a bond? What is a first mortgage bond? What is a debenture bond? What is an income bond?
5. What is stock? How does it differ from a bond? What is the object of a trust agreement?

6. Where a bank or trust company is asked to serve as trustee for a concern, what are the most important questions to be considered before acceptance?
7. What papers are to be filed with the proposed trustee by the corporation that proposes the loan?
8. If the preliminary investigation has been satisfactory, what should the trustee do next? How are the separate bonds or notes compared?
9. What is a sinking fund? When should it be used?
10. What is the usual provision as to foreclosure? What is the purpose of a protective committee?
11. In paying bondholders, what happens if the corporation is solvent on due date of issue, but not at some later date?
12. What are the fees of a trustee?

CHAPTER LXI

THE TRANSFER AGENT AND REGISTRAR

§ 526. Definition of Transfer Agent

A transfer agent is one who records the transfer of stock ownership. Stock, as has been stated, is the evidence of ownership in the assets of a corporation. Stock is not usually redeemable as bonds are, but if at any time the corporation should dissolve, then the stockholders would share in the net assets of the corporation in proportion to their holdings. In a sense they are partners in a business, but under a certain statutory form which limits the liability, and with certain other exceptions to the usual partnership agreement. The various states have different statutes setting forth the requisites for a corporation, but in all cases the ownership of the corporation is evidenced by stock certificates which are in the hands of individuals.

One of the advantages of the corporation organization is the fact that although you may buy stock today, you may sell it at any future time to someone else who wishes to be a stockholder of the corporation. You can accomplish this by selling your stock and transferring the certificate to the purchaser. It is the duty of the transfer agent to cancel the old certificate and issue a new certificate in the name of the new owner and to keep an accurate account of all transfers so made. The procedure of making the transfer can best be explained by examining the following individual case:

A is the holder of a certificate of stock made out in his name for 100 shares of the common stock of the Hollis Iron Company. He desires to sell 50 shares to B. In order that

B's ownership may be recorded on the books of the company, A or B must present the certificate of stock to the transfer agent, with the transfer of 50 shares to B duly endorsed on the back thereof, and with an authorization to transfer 50 shares of stock to B on the books of the company. The transfer agent will then take the original certificate for 100 shares, cancel it, and issue two certificates each for 50 shares, one in the name of A and one in the name of B. Thus 50 shares of A's holdings have been transferred to B and when the proper transfer entries are made it will appear on the books of the company that instead of owning 100 shares of stock, A owns only 50 shares and B owns 50 shares. The law of most states prescribes that each company incorporated in the state shall maintain a transfer record and stock ledger. In New York, certain specified requirements must be included in the make-up of these books. For the information of the company and the ascertainment of the rights of its stockholders, it is imperative that these records be accurately kept.

§ 527. Who May Act as Transfer Agent

A corporation may act as its own transfer agent, and in the great majority of the smaller corporations, the corporation does act for itself in this capacity. The work must be accurate; it requires a set of books consisting of a transfer record and ledger to be kept. The consequence of any carelessness in the maintenance and operation of these books is likely to be serious. In other words, the handling of the stock transfers and the entering of them on the transfer books is entirely different from any of the ordinary work in which the corporate employees are regularly engaged.

When the company is of any substantial size, it is considered more satisfactory and better business practice to have a bank or other corporation act as transfer agent. However, some of the largest corporations, such as the United States

Steel Corporation, the New York Central Railroad Company, and others, maintain their own offices for this purpose.

Banks and trust companies may legally act as transfer agents and there are companies specially organized, whose entire business is to act as transfer agents and registrars for other corporations. Any corporation which is listed on the New York Stock Exchange is required to have a bank or trust company act as its registrar. It may act as its own transfer agent but cannot act as both its own transfer agent and registrar. It is also true that one person or corporation cannot act in the joint capacities of transfer agent and registrar for corporations whose stock is listed on the New York Stock Exchange. This rule does not apply to corporations whose stock is not listed.

§ 528. The Advantages of an Outside Corporation as Transfer Agent

The duties of a transfer agent are technical and require the skill and supervision of trained officials to perform them correctly. Among the many duties of the transfer agent are some which require a knowledge of statutory provisions relating to stock transfers. All of the work is detailed and requires accuracy, as will be seen further on in this chapter. The work is of an entirely different nature from the ordinary routine business of the corporation. It is therefore advantageous to have an outside corporation perform these duties.

§ 529. Acceptance of Agency

Before a bank or trust company should accept either a transfer agency or a registrarship, careful investigation should be made as to the personnel of the corporation making the application, the credit standing of the individuals composing the personnel, their previous history, and the previous history of the corporation itself. The examination would include also

an investigation as to whether or not the officers and directors of the corporation, or at least those charged with the active management of the corporation, have had any previous experience of the same or a similar nature.

Where the bank or trust company knows nothing about the particular business in which the corporation is to engage, it should have an opportunity to be advised through expert opinion as to the likelihood of the success of the venture. It would also want to know through what medium the stock was to be sold, that is, whether the stock would be put out by a banking or brokerage firm, and if so, the firm's standing.

In short, the investigation would be similar to, although not quite so thorough as, the investigation where a bank or trust company is asked to act as the trustee of a bond or note issue. The points to be kept most prominently in the foreground when it is necessary to make a decision as to the acceptance or rejection of an application to act as transfer agent or registrar are the integrity and honesty of the proposition and the likelihood of its being reasonably successful.

No bank or trust company would care to act for a corporation which in all likelihood would not be a successful business venture. It should also be remembered that the bank or trust company, when it lends its name to any proposition, takes a certain amount of moral responsibility, even though it does not assume any legal responsibility.

As in the case of a trusteeship, the bank or trust company about to act as transfer agent or registrar must require that certain papers be filed with it. They are:

1. Resolutions of the board of directors, appointing the bank.
2. Copy of the certificate of incorporation, certified to by the secretary of state of the state in which the corporation was incorporated.

3. Any amendments thereto, certified by the secretary of state.
4. Copy of the by-laws, certified by the secretary of the corporation.
5. Copy of any amendments thereto, certified by the secretary of the corporation.
6. Copy of the minutes of the first meetings of the stockholders and directors, certified by the secretary of the corporation.
7. Specimen copy of the stock certificates to be used, certified by the secretary of the corporation.
8. Formal signatures of the officers of the corporation authorized to sign the stock certificates.
9. Either a certified list of the stockholders of the corporation existing at the time the transfer agency is turned over to the bank or trust company, or stock ledgers and transfer records proved to the date of transferring the records to the bank or trust company. If the corporation is just being organized, of course, these latter items would not be in existence.

§ 530. Duties of the Transfer Agent

After all of the requirements above mentioned have been fulfilled, the bank or trust company is ready to begin its duties as transfer agent or registrar. The new stock certificate books, properly signed by the officers of the corporation, should be turned over to the transfer agent. The stock certificates should be examined and compared with the certified copy filed with the transfer agent to see that they are in all respects alike. The transfer agent then opens the following books: (1) the stock ledger, and (2) the transfer record.

If the corporation is a new one and has not issued any stock, the first duty of the transfer agent will be to receive subscriptions for stock and to issue certificates to those who have

subscribed. Where subscriptions are paid in instalments, temporary or interim receipts are issued to the subscriber until the final payment has been made.

It is customary for the corporation for whom the bank or trust company is acting, to establish a deposit account with the bank or trust company. If this is done the transfer division, which is usually conducted as a part of the trust department, will credit the account for the sums received as subscriptions to stock. If, however, the corporation does not make the bank its depositary, the transfer division will turn the money over to the corporation from time to time.

At this point it should be mentioned that in accordance with statutory requirements in most of the states, the trust department of a bank must not hold funds subject to a draft or check. In Michigan, no trust company is allowed to maintain any checking account on behalf of customers. In other states, however, there may be a commercial department of the trust company in which checking accounts are maintained. Therefore, the transfer division must be careful that it in no way violates the statutes of the state in which it is incorporated and its office is located, by directly or indirectly establishing an account with a corporation on which it can draw. If the corporation has not opened a deposit account with the bank or trust company, the proceeds of subscriptions should be turned over to the corporation directly and not by honoring its drafts.

§ 531. Entries in the Transfer Record

Upon issuing new certificates, a complete record is made in the transfer record of all stock certificates issued, the amount of stock represented by each certificate, and the name and address of each individual stockholder. The stock certificates are listed in numerical order in this transfer record. The transfer record, therefore, is really a book of original entry and

corresponds to a journal of an ordinary commercial accounting system.

The stock ledger is posted from these books. As in any other ledgers, accounts are kept with the individual stockholders. Ordinarily, they appear in the book in alphabetical order.

At the time when the stock is issued it should be remembered that the Federal Tax Law requires that revenue stamps (documentary) be attached to the stubs of the stock certificates, at the rate of 5 cents for each certificate of $100 par value or fractional part thereof. If, however, the stock is of no par value, the tax is at the rate of 5 cents for each share, unless the market value exceeds $100 per share, in which case the tax is based on the market price, so that stock of no par value, the market value of which is $150, would be taxed 15 cents for two shares. In New York there is no state tax on an original issue of stock.

As soon as the issue has been put out, transfers of the stock are likely to commence, depending upon the marketability of the issue and particularly upon its speculative features. The more speculative the stock may be, the more sales there will be and therefore the more transfers.

The actual method of the transfer has been explained. There are, however, certain rules for making good transfers, which must be observed and insisted upon by the transfer agent. Where stock is transferred from one living person to another, the transferor must sign the certificate at the foot of the assignment printed on the back of the certificate. His signature must be known to the transfer agent or if it is not known, as is generally the case, it must be guaranteed by another bank or trust company or, in New York City, by a member of the New York Stock Exchange. In other localities, the guaranty of a member of the board of trade or exchange which is similar to the New York Stock Exchange may be

accepted as sufficient guaranty. Most New York banks and trust companies will not accept the guaranty of a curb broker. The reason for the insistence upon a guaranty by a bank or trust company, or a member of a stock exchange firm, is that the guaranty should be by a corporation, firm, or individual whose reputation is known.

The transferor also must place on the certificate or on a memorandum sale of the stock, the transfer tax stamps required by statute. There is a provision of the Federal Tax Law providing that revenue stamps (stock transfer) at the rate of 2 cents per $100 par value be attached to the stock. If the stock, however, is of no par value, the same rule as in the case of original issue stock applies, except that the rate is 2 cents instead of 5 cents. In New York State there is a statute requiring that all transfers of stock shall be taxed at the rate of 2 cents per $100 par value, the same rate as provided by the federal law. This tax is also a stamp tax. In some other states there are stamp tax laws to be observed.

§ 532. Transfer of Stock Belonging to an Estate

The ordinary transfer of stock between living people is fairly simple. The real technicalities arise, however, where stock belonging to the estate of a decedent is transferred from the name of the decedent. Technicalities arise when the transfer is made from either the executor of the decedent to an individual or directly from the name of the decedent to an individual who may be a beneficiary of an estate or the next of kin of the decedent.

Proof of Death. It is quite obvious that, if the stock certificate is to be endorsed by someone other than the person in whose name the stock appears, there must be an explanation showing the authority of the person who endorses the certificate as personal representative. The form of proof most universally recognized in the case of stock in the name of a

decedent is a certificate of the probate court showing that the person who has endorsed the certificate has been appointed executor or administrator. Sometimes a death certificate of the Bureau of Vital Statistics may be required.

Waiver of Notice from State Comptroller. In practically every state of the United States there are transfer tax laws also known as inheritance tax laws. These laws impose a tax on the property of decedents. In some of the states the laws do not affect direct descendants at all. In these cases the tax is imposed only against collateral relatives. In other states there is an exemption of varying sums to those who are direct descendants. In order to transfer stock of a decedent where there is any transfer tax law, it is necessary to obtain a waiver from the state comptroller or similar official. The effect of this waiver is to permit the transfer agent to make the transfer without giving further notice to the comptroller or similar official. In New York a transfer agent or any other person who makes a transfer of any kind of property which belonged to a decedent without obtaining a waiver, is subject to a penalty of not less than $5,000 nor more than $25,000, in addition to a liability for the tax upon the property transferred.

Certified Copy of Will. If the owner of the stock died leaving a will, then the transfer agent should require that a certified copy of the will be filed with it. Sometimes a plain copy may be filed, but the certified copy then should be exhibited to the transfer agent and an opportunity given to compare the plain copy with the certified copy.

Proof of No Debt. If the transfer is made within a year from the date of the death of the decedent, an affidavit should be made by the executor and filed with the transfer agent, alleging that the debts of the decedent have all been paid or amply provided for.

Other Papers to Be Filed. The Federal Estate Tax Law, which of course covers the entire United States, provides that

any estate of $50,000 or upwards is liable to a tax. In order to check up the transfers of property in estates of decedents, a provision of this law requires that a 60-day notice must be given to the collector of internal revenue. The 60 days start to run from the date of the qualification of the personal representative who is executor or administrator. Therefore, when a transfer agent is requested to transfer stock, it should know that the 60-day notice above referred to has been properly filed with the collector of internal revenue for the district in which the estate is located. The kind of proof that the transfer agent should require is not set forth in any law, but an affidavit made by the executor or a certified copy of the notice with the acknowledgment of its receipt, endorsed by the collector of internal revenue of the district, or an acknowledgment from the collector of internal revenue that such a notice has been filed, are a few of the kinds of proof that the transfer agent may properly require.

Requirements If Corporation Is Foreign. If the corporation whose stock is sought to be transferred was incorporated in a state other than the state where the transfer agent has its office, then a waiver must be obtained from the state where the corporation was incorporated. If the decedent died a resident of one state, the transfer agent is in another state, and the corporation was incorporated in a third state, then three separate waivers will be required. It must be borne in mind, however, that in all of the states, the transfer tax laws, sometimes called "inheritance tax laws," differ; and in some few states there is no inheritance tax, and in others the tax is only against collateral descendants of the decedent. These facts must be taken into consideration at the time of making the transfer. Therefore, it is always well for the transfer agent to have accessible the law with respect to the inheritance or transfer tax in the various states.

Endorsement of Executor. The stock certificate in the

case of a decedent will of course be endorsed by the executor or administrator on behalf of the decedent. Where stock belonging to an estate is sought to be transferred into the name of an individual not the executor or administrator, and someone not designated as a beneficiary under the will, it may, in certain of these cases, be necessary to obtain a certified copy of a decree of the surrogate's or probate court, directing the transfer of the stock to the individual. A case like this might arise where the estate was of insufficient value to meet all the debts of the decedent. It would, of course, in such a situation, be necessary to sell some or all of the assets of the estate, irrespective of the fact that some of the assets might be specifically bequeathed. The transfer agent would have a certified copy of the will filed with it, showing that certain stock was specifically bequeathed to an individual other than the one to whom it is sought to transfer this same certificate of stock. In order to justify such a transfer, it would, as stated above, be necessary to have a decree of the surrogate's or probate court. This decree should be filed with the transfer agent.

It would also be necessary to have such a decree where the stock was to be transferred out of the estate to someone other than a beneficiary, or even if it were to a beneficiary other than a specific legatee. If the transfer is made first to the executor or administrator, then he takes the responsibility for a transfer out of the estate, but the transfer is attempted to be made directly from the name of the decedent to another party, then the rules above mentioned apply. An example of a specific legacy of stock would be as follows:

A will provides that Certificate No. 889 of the Jones and Brown Iron Works Company, Inc., be bequeathed to Richard Roe. In a case like the above it is not necessary to obtain a decree of the court. A certified copy of the will will be sufficient authority to the transfer agent to make the transfer directly to Richard Roe.

§ 533. Lists of Stockholders for Dividend Payments

Among the duties of a transfer agent, there is, as has been stated, the maintenance of stockholders ledgers and transfer records. One of the reasons for maintaining these records is to have a list of stockholders with their addresses and amounts of their respective holdings, when the corporation is in a position to declare a dividend. The transfer agent at that time would be called upon to supply the corporation for which it is acting, with a certified list of stockholders, their addresses, and the respective amounts of stock held by each stockholder. The transfer agent may, of course, be called upon for a stockholders list at other times than dividend periods. Such occasions arise when the corporation wishes to send out notices of any kind, including increase of capitalization and rights to subscribe to stock, and the like. When a corporation is about to pay a dividend, a meeting of directors, of course, is held and the rate of dividend is declared and the time of payment is set, and it is decided to whom it shall be paid. The way this is done is to have the resolution declaring the dividend read that the dividend is payable to stockholders of record as of a given date. Often the resolution will declare the books to be closed as of a given date, and will set a time for reopening the books after the dividend has been paid. If the books are declared to be closed, then no transfers may be permitted during the time that they are closed. The certified list of stockholders in either case must be made up as of the date specified in the resolution.

§ 534. Definition of Registrar

The registrar is one who registers something, in this case securities of some kind, usually either stock, bonds, or notes, and sometimes commercial paper. The New York Stock Exchange rule requires that the registrar shall be a bank or trust company. If the stock is not listed, however, no rule exists

as to who the registrar shall be. Some corporations act as their own registrar as well as their own transfer agent, while other corporations have their transfer agency and registration work handled by one bank or trust company. The better practice, however, is to have the registration handled by a bank or trust company other than the organization acting as transfer agent.

§ 535. Duties of the Registrar

The duties of the registrar are much less complicated than those of the transfer agent. It is his duty to see that the corporation does not overissue stock, that is, that it does not issue more than the stock authorized by the board of directors under the charter limitations. In addition to this, the registrar must receive and examine the certificates to see that they are genuine. He will record registrations in a book kept for that purpose and then deliver the certificates to the transfer agent.

Of course before accepting the appointment as registrar, a bank or trust company which cares to maintain a high-class reputation will make an investigation similar to and as drastic as that which it would make were it going to act as transfer agent. In fact it may be said that in all cases no bank or trust company will act on behalf of another corporation or individual unless it is satisfied of the standing of the corporation or individual.

§ 536. Fees

The fees for acting in the capacities of transfer agent and registrar differ in different localities. No set rules can be laid down as to charges which may be made, although certain fees have been recommended as proper by the American Institute of Banking.

In addition to the fees that can be made for services, a

transfer agency frequently carries with it a deposit account which is, of course, valuable and adds to the attractiveness of the business.

Review Questions

1. What are the duties of a transfer agent? What is the procedure when shares of stock are sold? What are the books kept by a transfer agent?
2. Why do small corporations not require a transfer agent? Why do the largest corporations maintain their own transfer offices?
3. What are the reasons for employing banks and trust companies as transfer agents?
4. Why do banks and trust companies investigate carefully before accepting a transfer agency or registrarship? What papers are filed before a bank acts as transfer agent for a corporation?
5. Who has charge of the book of stock certificates? What is the first duty of the transfer agent? What does the transfer agent do with funds as received? Can the trust department hold funds subject to check?
6. What is the transfer agent's book of original entry? To what books are these entries posted? What is the federal tax on original issues of stocks on transfer? What tax laws has your state as to original issues and transfers? How is the signature of the transferor proved?
7. When stock belonging to an estate is to be transferred, what must the transfer agent require to make the transfer safe? When is it necessary to have a waiver of notice from the state comptroller? Why does a transfer agent want to be sure that the 60-day notice has been filed with the collector of internal revenue for the district? If the corporation whose stock is to be transferred was incorporated in another state, what caution is necessary? Why should the transfer agent have laws of all the states accessible? Who signs the certificates belonging to an estate? When is a decree of the court of probate needed? In case of a specific legacy of stock, what is needed?
8. When are lists of stockholders required? What fixes the date of a dividend?

9. What is the function of the registrar of stock? What do the rules of the New York Stock Exchange require?
10. What is the object of having a registrar of stock? Does a bank exercise caution as to undertaking the registrarship of a corporation?
11. What are the usual fees charged in your locality for services as transfer agent and registrar?

CHAPTER LXII

ORGANIZATION OF A TRUST DEPARTMENT OF A BANK OR TRUST COMPANY

§ 537. Divisions of a Trust Department

It is well in connection with the work of this or any other department of a bank or trust company, to have the functions performed by the department laid out on a chart, and to follow the divisions of the work thus laid out as closely as possible. A typical trust department would include the following divisions:

1. Corporate trust division
2. Reorganization division.
3. Personnel division
4. Transfer and registration division.
5. Fiscal agent division
6. Personal trust division
7. Custodies and safe-keeping division
8. Accounting division
9. Bond and mortgage division
10. Real estate division

These in turn will be divided in accordance with the work to be done in each particular division, but this will be more clearly shown in the accompanying charts and those shown in Form 25. There will be one or more officers in charge of the work, depending on the size of the bank and the volume of business transacted. If business is transacted with all of the different divisions shown in the chart, it will be necessary to

have one officer in charge and two or three assistants to handle the work in each division.

The chart here shown is of a moderate sized trust department, outlined as far as executives are concerned. (The complete charts of a bank organization will be found under Form

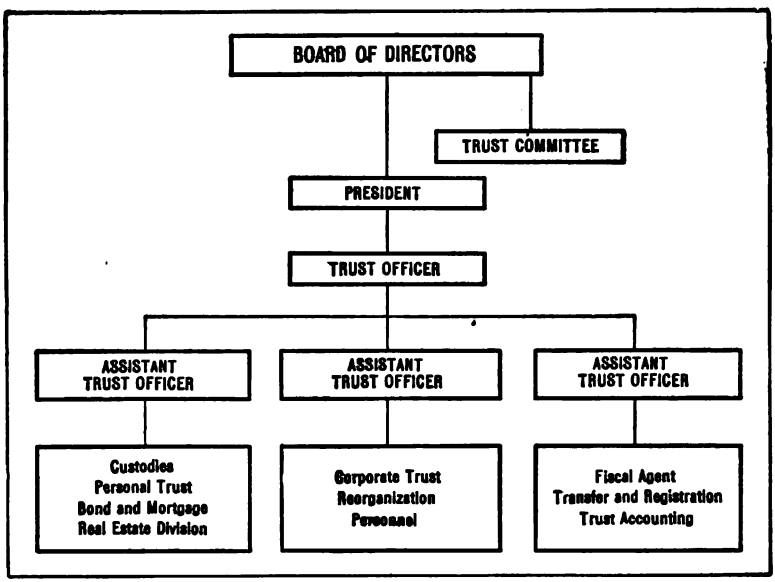

Chart 1. Organization of a Trust Department
See also Form 25.

25.) In this case there is a trust officer in charge of the entire department, and three assistant trust officers.

One has the custodies division, personal trust division, bond and mortgage division, and real estate division under his supervision.

Another has the corporate trust division, reorganization division, and personnel division.

The other has the fiscal agent division, transfer and registration division, and trust accounting division under his supervision.

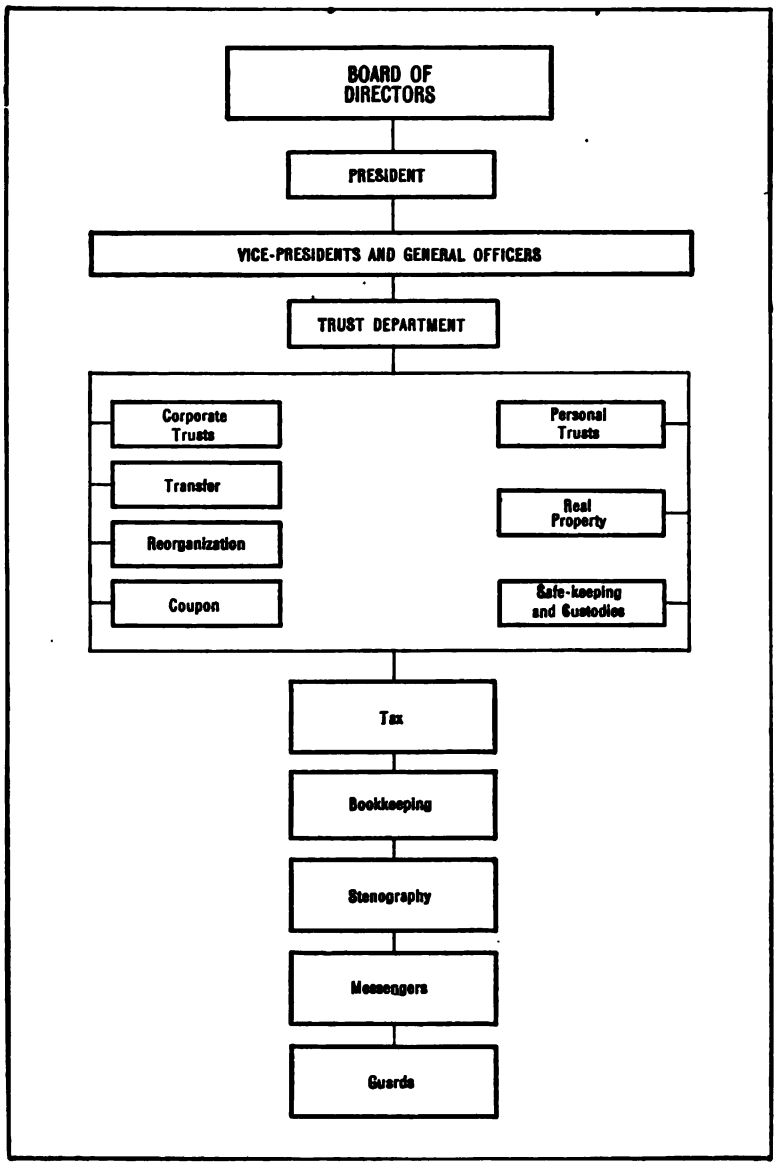

Chart 2. Departments of a Trust Division
See also Form 25.

Of course, any other arrangement, as long as it was fairly definite, would probably work out just as well.

§ 538. The Trust Committee

The trust committee is composed of members of the board of directors of the bank or trust company. They are chosen by reason of their particular qualifications for this kind of work. The members of the trust committee should be successful business men whose judgment, as proved in their particular line of business, has been good. It is best to have men versed in different kinds of business, so that when any question is placed before them there is someone experienced along the particular line who can render an intelligent decision. One of the chief functions of the committee is to pass upon investments made by the trust department for estates for which the bank or trust company is acting as a fiduciary. The committee has nothing to do with the details relating to the conduct of the department. In some companies it passes upon the acceptance of business, but not in all.

§ 539. Duties of the Trust Officer

The trust officer is responsible for the conduct of the entire department. He must be ready to interview customers and to advise on the different kinds of business transacted by the department. He should delegate certain work, as indicated in the chart, to his assistants, who in turn will be responsible to him for the work of these particular divisions with which they are charged. The trust officer should avoid, as much as possible, attending to the details, leaving these to his subordinates.

It has been found well worth while for the trust officer to hold conferences with his assistants at stated times. In some cases where the volume of business is great, a conference takes place every morning; in other cases, once a week. Of course, all matters before they are accepted should be referred to the

trust officer. If necessary he will in turn refer them to the president of the bank and to the trust committee for final decision.

The trust officer should be consulted in reference to all matters of publicity, not only as to the general policy but as to the actual material used, for the reason that he is presumed to have an expert knowledge of the services performed by this department, and should be qualified to pass on the expediency and value of any statements given to the public.

§ 540. The Duties of the Assistant Trust Officers

The assistant trust officers have the supervision of particular divisions of the trust department, as shown in the chart. Each assistant trust officer must, therefore, attend to the details of his department through his clerical force.

Generally, there is one assistant trust officer who has charge of the personnel of the entire department, whose duty it is to study the clerical force, noting their capacities and deficiencies, correcting the latter, and fitting the different clerks into the work to which they are best suited. The number of people employed in the trust department of a bank will, of course, depend upon the volume of business handled. It is well whenever possible to divide the work of the department so that a particular clerk will handle chiefly one kind of work, so that the greater expertness may be acquired and the responsibility for efficient work placed on particular individuals. Careful study of the charts given in this chapter will give an adequate idea of a typical trust department of a bank or trust company.

Review Questions

1. What are the usual divisions of a trust department? What is the purpose of the various divisions?

2. Who compose the trust committee? What is its function? How should its members be chosen?
3. What are the duties of the trust officer? Why should he have frequent conferences with his assistants?
4. What are the duties of the assistant trust officers? What are the advantages of a division of labor in the trust department?

CHAPTER LXIII

THE RELATION OF THE LEGAL PROFESSION TO A BANK OR TRUST COMPANY ACTING IN A FIDUCIARY CAPACITY

§ 541. The Advice of Counsel

Every bank or trust company will find that it will need the advice and counsel of first-class attorneys. If the bank or trust company maintains a trust department, the advice of an attorney will be the more needed and the more important because of the fact that almost everything that is transacted in a trust department is technical and comes clearly within the provisions of some statute or law. It is, therefore, advisable that a bank or trust company at its inception select a counsel whose experience has been such that he can give adequate information in regard to general banking provisions—particularly in regard to the management and handling of estates and corporate matters. The relation between the bank's counsel and the bank should, of course, be extremely cordial and close, as in fact the relation between any client and his attorney should be.

§ 542. Friction Between Trust Companies and the Legal Profession

A serious conflict of interest has arisen between financial institutions maintaining trust departments and the legal profession. It is too true that in the not distant past, and even at the present time, the execution by these institutions of certain work that is properly the prerogative of the legal profession has caused the members of the bar to feel some antagonism to banks and trust companies. Therefore, maintenance of friendly

relations between banks and trust companies and the legal profession is a growing problem, made more difficult by the attitude of some of these financial institutions. It is a problem that is extremely important to both parties. The solution would not be difficult if both the financial institutions and the legal profession would recognize certain fundamental principles and act accordingly.

The profession of the law is one of the oldest and one of the most honorable of any of the more intellectual vocations into which men have entered. From the beginning of civilization, which means from the time when men lived in a society that recognized the rights of others, there have been laws and lawyers to assist in the enforcement and administration of the laws so recognized.

§ 543. Requirements for Admission to the Bar

In order to become a member of the bar a certain amount of preparation in the way of study is required in every state of the Union. One must satisfy a board of examiners that the mental attainments of the particular individual show that he is capable of practicing law. Having satisfied such a board as to his intellectual qualifications and ability to advise others with respect to their legal rights, the applicant for admission to the bar must then satisfy a character committee as to his moral qualifications. Save the medical profession, few lines of professional endeavor require as severe tests as those that are set for the man who desires to enter the legal profession.

After the authorities have been satisfied as to both the mental ability and the moral character of the applicant for admission to the bar, he must take oath that he will support the constitution of the United States and the constitution of the state in which he is admitted. Having been admitted, he becomes an officer of the court and is responsible to it for his conduct. He may be censured by the court for any misconduct,

or the court may revoke his license, either temporarily or permanently, depending upon how serious the offense of which he is guilty may be. Every state has a statute on its books making communications between client and attorney confidential, so that such communications are absolutely inviolate and may not be revealed by the lawyer except with the full consent and knowledge of the client himself. The attorney stands in a unique position, different entirely from that of any other individual or class of individuals. An attorney must be trained in the law, experienced in the interpretation of the law, familiar with the technical language used in legal documents, and accustomed to studying the decisions of courts and applying them to the particular case before him.

§ 544. Duties of a Lawyer in Preparing a Will

In order properly to advise a client or to prepare a legal document, all of the foregoing valuable qualifications are necessary. Take, for example, the preparation of a will as set forth in the earlier chapters of this work. This act, in that the testator thereby seeks to dispose of property which he has worked a lifetime to accumulate, in such a way as will best protect and provide for his family and survivors, is of the utmost seriousness and importance. A will is almost a sacred document in that it is the last expression of the wishes of the person who, when the will becomes effective, will have passed out of this world, yet it frequently happens that a testator will prepare his own will, or take the advice of some unskilled friend. This sometimes results in some very peculiar, even ludicrous wills, one of which is as follows:

GILBOA, Feb. 20, 1883.

I, George P. Ashmore, of the town of Gilboa County of Schoharies and State of New York, do hereby in this my last will and testament, give and bequeath to my daughter Ruth Ashmore, my only lawful heir, all my real and per-

sonal estate to be used according to her best knowledge and ability both for her support and comfort and benevolent purposes, so long as she needs it.

I give and bequeath to the Board of Foreign Missions of the Reformed Church in America Five Hundred Dollars for the support of Missions and Missionaries to be paid in one sum or one-hundred-dollar payments, as Providence appears to direct, before my decease if thought best.

I give and bequeath to the Board of Education of the Reformed Church in America enough to endow or found a scholarship, the annual interest to be used to educate and qualify needy pious young men for the Ministry, to be paid before my or Mary's death if thought best, after the expenses are all paid, all the remainder of my estate to be equally divided between the Foreign and Domestic Missionary Boards of the Reformed Church in America for the support of Missions and Missionaries.

I appoint John C. Haynes for sole executor.

(Signed) GEORGE P. ASHMORE, *Testator*

H. M. HAYNES
R. D. CARR *Witnesses.*

P. S. The five hundred dollars given by the second bequest in said will was paid by the testator during his lifetime in one-hundred-dollar payments.

Read the will set forth above again, try to interpret or construe it. When this will was probated the resulting litigation dissipated a large part of a moderate sized estate. For two years the matter was before the courts, and the final construction was unsatisfactory to all parties. This is typical of what happens when a man makes his own will, and the reason why lawyers are said to approve such amateur efforts.

When a corporation or an individual who is not a lawyer presumes to advise anyone as to his legal rights or to assist him in the preparation of a legal document, it or he is not responsible; and even if his advice is wrong, or causes loss or injury to others, or is even immoral, no one can be held,

§ 545. Why a Bank or Trust Company Should Not Do Legal Work

No bank or trust company should set itself up as an advisor in any legal matters. It is not and cannot be admitted to the bar, and it is not trained and cannot be trained in the law. Though it may employ a lawyer and gain his services for customers, the attorney is responsible only to the corporation which employs him. In fact, it would be unethical for the attorney to give advice to customers of the bank or trust company, because of the fact that he does not owe the paramount obligation to the person seeking the advice, but to his employer. One of the fundamental ethical principles of the legal profession is that an attorney must not represent a client unless he can recognize a paramount obligation to serve his client. When an attorney is employed by an institution, he cannot recognize a paramount obligation to serve a customer of the bank or trust company should the interests of the customer and of the institution conflict.

There are trust companies and banks which advertise that they will prepare wills for customers who will in turn designate the bank or trust company as executor or trustee, or both. Their method of procedure when an individual comes in response to the advertisement, is to call in the counsel employed by the bank to discuss the preparation of the will with the individual. He is necessarily advised that the bank or trust company should be appointed executor or trustee, or both. The attorney owes his first obligation to his employer, namely, the bank or trust company. It might well be that in a particular case this advice would not be proper, and at all events the attorney is handicapped in that his paramount obligation, which should be to the client whose will he is drawing, cannot be so because of the fact that he is not his client at the time, but a customer of the bank.

In New York these facts are recognized and a statute is

on the books which prohibits corporations from practicing law. Decisions have been rendered under this statute which have strongly supported it. In a case under this statute the court held that the preparation of a will by an attorney employed by the trust company was practicing law within the meaning of the statute and was in violation thereof.[1] Although it may not as yet be a statutory offense in other states for corporations to practice law, and especially for banks or trust companies to prepare wills, yet it is as unethical and ill-advised in one place as it is in another, and it is not too much to say that no bank or trust company should, under any circumstances, indulge in the practice.

§ 546. What a Lawyer May Advise

In other chapters of this work we have endeavored to point out in fair and reasonable ways, the advantages of the appointment of a bank or trust company in a fiduciary capacity over the appointment of an individual. It is believed that attorneys should recognize this fact and that they should advise their clients in the interest of the clients and not necessarily in their own. There is no doubt that the tendency would be for some attorneys to advise their clients not to appoint a bank or trust company, because by so doing they feel that they will lose the employment of probating the will and administering the estate when the time arrives. This, however, should not be a moving force affecting in any way the advice which the attorney gives his client. Furthermore, it is not necessarily true that the attorney who prepares the instrument will not have the work of probating the will and administering the estate. This matter is discussed in §§ 185, 191.

§ 547. How Far a Bank or Trust Company May Go

From the standpoint of ethics it is not well for banks and trust companies to attempt to advise customers with regard

[1] People v. People's Trust Co., 180 App. Div. (N. Y.) 494.

to their legal rights. This does not, of course, mean that a bank or trust company officer should not discuss with a customer certain practical provisions that he may want to make in his will, nor does it mean that the officer of a bank or trust company should hesitate to discuss the general proposition of the appointment of the bank or trust company in a fiduciary capacity. When, however, the proposition is put before the bank or trust company officers to prepare a will, they should refuse to do so and should tell the customer that the proper person to prepare the will is the customer's own counsel, or at least counsel of his own choosing. If more than this is done, the institution assumes a liability and a certain responsibility which is unnecessary and which it is well to avoid.

Aside from the question of ethics it is well to consider what is to be gained by making friends of members of the legal profession. A great deal of the business that comes to a bank or trust company, particularly in its trust department, comes through attorneys. A broad-minded, well-trained attorney will almost certainly advise his client to appoint a bank or trust company in any fiduciary capacities in preference to an individual; or if there is some reason why an individual should be appointed, he will advise that an institution be appointed co-executor or co-trustee, along with the individual. Moreover, the attorney will select the depositary for funds of an estate for which he is executor or administrator. Naturally he will choose the bank or trust company towards which he feels a friendly interest, everything else being equal.

§ 548. The Attorney for the Estate

Another phase of this question arises when a person, having named the bank or trust company as his executor or trustee, dies and the will is to be offered for probate. There are many institutions in all sections of the country which insist, as is

their right to do, upon retaining the bank's own counsel to probate the will and administer the estate. The justification for doing this is that the executor and trustee, whether it be a bank or trust company or an individual, must assume the responsibility for the work. With the responsibility, of course, must go the right to select the medium through which the acts shall be performed.

In making the selection, however, there are conditions to be taken into account which are too often overlooked. If A, an individual, has employed a certain attorney to prepare his will, and if the attorney is a man of high standing in his profession, both as to learning and as to character, and if the attorney had for many years been familiar with the affairs of the testator, it is usually true that the attorney will handle the legal matters pertaining to the administration of the estate of the decedent better than would the attorneys for the bank or trust company, no matter how eminent those particular attorneys might be. In other words, there should be no hard and fast rule that under all and any circumstances the bank's attorneys should be the attorney for the estate. It might be that the attorneys for the bank or trust company were engaged in some litigation in which the interests were antagonistic to that of the estate of which the bank or trust company is the executor or trustee. In such a case there could, of course, be no question that the bank's counsel should not be retained to advise it with regard to that particular estate. Then, again, it must be remembered that if the testator had confidence in the attorney whom he employed, there is reason for the bank or trust company to be willing to allow the attorney to represent it in the administration of the estate in question.

It is eminently fair that a reputable attorney should be retained. He worked hard to get the good-will of the client and he does not want to lose the opportunity of representing the

client's estate when the client dies. It must always be remembered that if a bank or trust company refuses to permit the attorney to act, it is taking away business from the attorney; and when one takes away business from another, friendly relations, to say the least, are not established. Attorneys are just as human as men in other walks of life and they react to the attitude of the bank or trust company in the same manner that other men would. Good business policy, therefore, seems to dictate that as much latitude in retaining counsel in the work of administering estates be allowed as is consistent with the responsibility that the bank or trust company assumes. If it would be perfectly safe to permit the attorney who represented the decedent in his lifetime to represent the bank or trust company in the administration of his estate, he should be allowed to do so.

Considerable agitation has been set on foot by attorneys to restrict the activities of banks or trust companies in getting fiduciary business, the motive of which probably lies in the fact that a certain amount of business is being taken from attorneys. If, by a liberal attitude on the part of banks or trust companies, this attempt to get adverse legislation can be discouraged, that is much to be desired.

In conclusion it may be said that:

1. It is absolutely improper for any corporation, and especially a bank or trust company, to do anything which can be considered practicing law. In observing this rule it is better to err on the side of conservatism than otherwise. The consequences in some states are serious; in all, it is unethical.

2. The counsel who are regularly retained by the bank or trust company may not be able to handle certain fiduciary matters as satisfactorily as the attorney who usually represented the testator or the creator of the trust.

3. A large proportion of the business is derived from the lawyers and consequently their good-will is valuable.

4. Adverse legislation is the all too likely result of methods considered reprehensible by the various bar associations, which are always trying to improve the administration of justice.

Review Questions

1. Why is the advice of counsel essential to a fiduciary corporation?
2. What has caused some friction between trust companies and lawyers as a class?
3. What are the requirements for admission to the bar?
4. Why is it difficult to make a will?
5. Why are fiduciary corporations disqualified for such work? What is the procedure when a customer employs them to make a will? To whom does a lawyer, under such circumstances, owe the higher obligation?
6. What conflict of interest arises at times in the preparation of a will?
7. To what extent can a fiduciary corporation go in advising customers in legal matters? Why is it desirable that lawyers and bankers should be on friendly terms?
8. Where a fiduciary corporation is acting, should it use its own counsel? Why? Is the rule unvarying?

PART VI

ACCOUNTING FOR ESTATES OF DECEDENTS

CHAPTER LXIV

PURPOSE AND THEORY OF ESTATE ACCOUNTING

§ 549. Purpose of Estate Accounting

> The executors have to account for the estate of the testator come to their hands, or to the hands of any other persons by their order, or for their use, and to show that they have dealt with the whole in due course of administration.[1]

It is necessary at the close of the administration for the executor to render a detailed account of his transactions. To do this he must keep accurate records. The ultimate purpose of all estate accounts is the fulfilling of the law's requirement that the executor make certain reports covering his stewardship. But even if there were no such requirement, there is so much danger of dispute, so much opportunity for ill-feeling in handling the funds of another in what is usually a personal rather than a strictly business relation, that full records are most desirable. The prudent man, recognizing the difficulties that will arise in the more or less gratuitous care of the business affairs of others—who are often women and children untrained in business—will see the advisability of being most careful to have for his own protection a complete account of all that he has received and all that he has turned over.

> The account should state if an inventory has been filed, and if none has been filed, the account itself should furnish the information usually thus supplied. It should likewise state whether or not advertisements for claims have been published, what claims have been presented, what allowed, and what rejected; and the time and manner in which they were rejected or disputed, and the reason therefor. Also,

[1] Caldicott, Executorship Accounts.

what claims have been presented and allowed since the expiration of the publication of the advertisement for claims. The accountant should then proceed to credit himself with funeral charges and expenses of administration, with moneys paid to creditors (naming them) and payments to legatees or next of kin. He should state the age of legatees and next of kin, if any are minors, and whether they have guardians, and, if so, their names and places of residence, and how appointed. If there is any other fact which has occurred, as part of his proceedings, which may affect the estate or the rights of any distributee, or his own rights, he is bound to state it. He must not only state in what character his payments were made, as whether to creditors, legatees, or next of kin, or for expenses for funeral charges or of administration, distinctly, but he must produce vouchers supporting each payment, or, in cases of claims under $20.00 where no voucher is produced, he must make and present in lieu of voucher, his own oath positively to the fact of payment, when made, and to whom. Unless the order of the Surrogate, requiring an executor or administrator to render an account of his proceedings, is obeyed in this manner, as plainly indicated by the statute, he will not have made the proper response to the order.[2]

§ 550. Lack of Knowledge of Subject

Many persons who are appointed to act in fiduciary capacities have, at the time of their appointment, little knowledge of the duties imposed upon them. Especially is this true in regard to the manner of keeping their records and preparing reports therefrom for presentation in court. The necessity for this knowledge is often not recognized until they are called upon to render an account of their transactions for the scrutiny of the court before receiving a discharge from the obligations which they have assumed.

The impression that little knowledge is necessary has been caused by the prevalent idea that the sole duties of an executor are to receive and disburse money and, at the end of his ad-

[2] Matter of Dwight, 9 N. Y. Supp. 927, 928.

ministration, to fill out a blank form provided by the clerk of the probate or surrogate's court. As a result of this impression, testators in selecting their executors have persisted in requiring only social qualifications. Much difficulty and financial loss have thus been caused by the failure of administrators and executors to understand early enough for them to make their records complete, what would be required of them in the way of an accounting, and many quarrels and lawsuits have resulted from the fact that legatees and heirs-at-law have not known the meaning of even the simple terms used in probate accounting. The incompetence of executors generally has become a matter of common knowledge.

§ 551. Increasing Importance of Subject

It seems needless to say that persons who are appointed to take care of estates should be acquainted with the proper manner of keeping their accounts so that when called upon to present statements of their transactions to the court for adjudication they will be able to give all required information in a plain and intelligible form. It seems equally evident that all persons interested in such matters should know enough of estate accounting to understand the records and statements relating to the administration. Today, however, the matter is of unusual importance, because estates are larger than ever before, and the work of the executor has increased proportionately in amount and complexity. More exact accounting is required by the courts now than formerly, and in the future still more precision will be required.

The reaching down of inheritance and transfer taxes to smaller estates and of the income tax to persons of less means is also tending to force a fuller handling of details upon fiduciaries as upon individuals—even more so, because the income tax returns required of fiduciaries are more complex than those required of individuals.

§ 552. The Legal Obligation to Account

There is a legal obligation on the part of an administrator or executor to keep proper accounts of the handling of money or other property placed in his care. Although the requirements of the different states vary in the specifications as to what is required of an administrator, these variances are not great and in no way affect the fundamental principles involved in the keeping of the accounts.

The law of most states does not prescribe any form of estate bookkeeping even where it does prescribe a form of final accounting. The courts are, however, inclined to hold that if the executor fails to keep books or keeps them in such a manner that it is impossible readily to prepare the final accounting, he may be charged personally with the expense of drawing off that account. For this reason it is especially desirable that the executor keep his current accounts in a way which will enable him to prepare his final accounting without difficulty and at the same time to handle his current work without unnecessary labor.

Although the laws are not usually explicit as to the manner in which estate accounts shall be kept, there are a large number of phrases used in the required reports which will be new to one who has had no dealings with probate work. There is less freedom allowed in probate than in ordinary commercial accounting, because in the latter case only the owners of the business need ordinarily be satisfied, while in the former the account must invariably be rendered to a court.

§ 553. General Principles of Estate Accounting

While it must be understood that there are no absolute rules that can be invariably followed in keeping the books of an estate, there are certain general principles which will apply equally to the accounts of estates of all sizes, whether in charge of administrators, executors, or trustees.

Fiduciary accounting stands alone in that the:

> . . . idea of proprietorship is nearly or entirely absent, and its place is taken by responsibility or accountability. It always arises from delegated authority, the affairs being placed under the control of some person as representative of the actual owner whose object in keeping accounts is to prove that he has faithfully administered them. . . .
>
> The essence of fiduciary accounting is the ascertaining to what extent the person holding these delegated powers has fulfilled his duties and to what extent he is still accountable. He is *charged* with all property coming under his control, and he is *discharged* by any lawful disposal of it for the good of the estate.[8]

§ 554. Separation of Corpus from Income Must Be Maintained

It is important that the books show separately the principal and the income of an estate. There was a time when the distinction between corpus and income (see Chapter XXXV) was of interest only when a trust was created, but income and inheritance tax laws have made it of importance in the accounting of all estates. Inheritance taxes apply only to the principal; income taxes, from the viewpoint of the estate, apply only to the income. It must, however, be remembered that taxable income is not always exactly identical with income as opposed to corpus. (See § 315.)

Another need for the separation of principal and income is found when dower or curtesy rights enter into the handling of the estate property.

§ 555. All Assets Must Be Accounted For

The disposition of all assets, whether principal or income, must be shown in order to enable the representative to obtain his release. Especial care in this regard is necessary when the income is divisible among several beneficiaries during their lives, as in the event of the death of a beneficiary the income

[8] Sprague, Philosophy of Accounts.

accrued to the date of his death belongs to the estate of such beneficiary and is payable as he may direct by will, or to his heirs if he dies intestate.

The importance of the executor's being able to show definitely the amount of the income belonging to a minor beneficiary is apparent, as the executor can be called upon by the minor, when he attains his majority, to account for the share of income from the estate to which he may have been entitled.

§ 556. Need of Full Explanations of Entries

The danger always exists with a person not trained in the keeping of accounts, that while the entries he may make are perfectly clear to him at the time, they will become "cold," as is said of stenographers' notes, and will be unintelligible after a short time has elapsed. Auditors know too well how great this failing is among even experienced bookkeepers who are not in the habit of having their books examined in detail and consequently fall into the habit of recording transactions without full explanation of the details, apparently on the theory that since they would not have made the entry if they had not known it was right, there is no need to bother about recording the facts in the case. Every bookkeeper learns sooner or later, if he continues in that occupation, that such a practice will not do, for the time always comes when the details underlying certain entries on the books must be known.

It is more essential that details be fully recorded in the case of an administrator or executor than in the case of the commercial bookkeeper, for the former is not employed because of any confidence in his ability as a bookkeeper, and is seldom chosen by the persons whose property he is handling. In fact he is too often looked upon by them with a certain antagonism rather than with favor. He must be especially careful, because the law, through the public desire to make sure that property left to heirs shall reach them safely, has

imposed on the administrator certain burdens of personal liability if his acts are not strictly in accordance with statute, or if he has taken undue risks in the handling of property in his control. This may be the case even though he was perfectly conscientious in the taking of these risks, hoping thereby to increase the amount which he might distribute.

§ 557. Service of the Public Accountant

It is this frequent lack of fullness in giving detailed explanations of entries that is the usual cause of a public accountant's being called in where it had not been intended to use one.

> Carelessness and disorder are vices to which both testators and executors are subject, and frequently an accountant is employed because no one without his special training, and the patience which it engenders, could bring order out of the seeming chaos resulting from want of system in recording transactions as they arise.[4]

The sole purpose of keeping estate books is to enable the representative to render an accounting. It is essential that books be kept, and that they be kept in even more detail than would seem to be warranted by the amounts involved were the accounts being kept by or for the decedent himself. The question comes up immediately as to whether an accountant should be employed. This must be decided for the individual case after a study of the complications which are likely to arise in the settlement of the estate, but it is safe to say that in a great many cases in which accountants are not employed, money for the heirs would have been saved had the books been kept from the start by, or under the supervision of, competent accountants. Too often the records are allowed to get into a muddle which costs infinitely more to unravel than would

[4] Caldicott, Executorship Accounts.

have been the cost of keeping the records properly from the start. This is one of the cases where a stitch in time saves nine.

The public accountant is usually worthy of his hire, and while his fees may seem high it is safe to say, in the case of the men sent out by reputable firms, that the speed with which they work and the reasonable assurance of accuracy should more than make up any difference in per diem rates.

The courts are coming to recognize this fact, and if an administrator asks that he be allowed the sevices of an accountant, the cost being charged to the estate of the deceased, the request is ordinarily granted. The expense is not likely to diminish the amount to be distributed below what it would be were the accounts improperly kept, with the result that they would have to be straightened out later at extra cost, perhaps with the attorneys for the parties at interest appearing again in court. Public accountants are being called upon more and more to assist in the administration of estates, and estate accounting has become a special branch of the accounting profession.

§ 558. Choice of the Accountant

Care must be used in the selection of the accountant. Just as one would not choose an optician to operate for cancer or select a corporation adviser to defend a murderer, so in picking the accountant to handle a set of estate books one should make sure of getting a man who is familiar with probate practice and the forms of reports used in estate matters. If the accountant is to be of the greatest value he must have a knowledge of testamentary law, for the whole scheme of accounts used is different from that of the ordinary set of commercial books. An examination of Chapter LXVII will show that estate accountancy is a branch entirely alone.

If the accountant who is employed is properly trained in

estate work he can make himself a very valuable assistant to the attorney and to the representatives.

> Apart from the accounts an accountant can often render valuable aid to an executor by his training in administrative work. There are often trades to be carried on, financial arrangements to be made, and many things to be done at the moment with a knowledge and promptitude which arises from practice as liquidators and trustees.[8]

§ 559. Extent of His Employment

The service for which an accountant is usually employed varies with the size of the estate and the complications of the will. It is often wise to let him lay out the form in which the transactions are to be recorded, making the initial entries, and instructing the representative or his clerical assistant in the further use of the books. This is ordinarily inexpensive and materially reduces the amount of labor which will be required later, when the reports are to be prepared, whether by the representative or the accountant.

Many estates employ public accountants for the following objects:

1. To lay out the system and open the books, as above.
2. To make occasional visits and see that the work on the books is being done and done properly.
3. To prepare all reports.

This has proved very satisfactory, for the executor by using care can keep the accounts of an estate in such form that a skilled accountant's service need be called for only once or twice a year. In other cases the accountant writes up all the books from the check stubs. If the executor, in filling out the stubs, gives the full details of the source of receipts and the nature of and cause for all payments, the skilled accountant

[8] Caldicott, Executorship Accounts.

can readily prepare the proper entries to be made on the journal and ledger, thus providing all the information that may be required. The danger in this method comes from the magnitude of the "if." Too often the details will not have been recorded, and unless the accountant's visits are so frequent that all transactions can still be remembered, there may be an insurmountable difficulty in supplying the needed information.

The degree to which the services of the accountant will prove desirable depends largely on the complexity of the affairs of the decedent, on the number of bequests under the will or the number of heirs if there is no will, on the number of financial transactions, and on the experience of the executor in such matters.

§ 560. Purpose of Part VI

It will be the purpose of this part of the present work to explain the manner of keeping the accounts of estates under the care of administrators, executors, and trustees so as to give the information that may be required in presenting the accounts of estates before the court to be passed upon. The systems of accounting which are suggested are in accord with the best modern practice. In these, one thing especially has been sought—simplicity. There is no reason why probate accounting should be complicated. The forms herein presented have been found in practice to be easy to handle, facilitating the current bookkeeping, and enabling the representative to analyze currently the receipts and disbursements, thus obviating the necessity for extensive analysis at the close of the administration. While the same general principles apply to the work of the administrator, the executor, and the trustee, there are enough differences to warrant separate treatment.

The authors are assuming that the elements of ordinary double-entry bookkeeping are known to those for whom they

write. Anyone who knows nothing of bookkeeping should study some good elementary work[6] before undertaking this. Elementary bookkeeping is of itself a subject of considerable magnitude which could hardly be embraced in a work of this kind.

Review Questions

1. Why should accurate records be kept of all transactions in the settlement of an estate?
2. How much information as to the duties of an executor or administrator has the average man or woman? What effect should this lack of information have on the selection of executors?
3. Why should those concerned inform themselves better? What two things have increased the complexity of administration?
4. What is the law as to estate accounting in your state? What occurs if proper records are not kept?
5. What is the essence of fiduciary accounting? What takes the place of the proprietory idea?
6. What is the reason that estate books must maintain the separation of corpus and income?
7. What responsibility is assumed by the representative? What is said of a minor's rights?
8. Why are full explanations of all entries desirable? Why is this more important in estate accounting than in ordinary bookkeeping?
9. Why are professional accountants often employed? When is this procedure advisable? Will the court usually allow this expense to be charged against the estate?
10. Can one accountant do as good work as another in estate accounting?
11. To what varying extents may an accountant's assistance be had? On what does the amount of professional assistance required depend?
12. What is the purpose of this part of the book? Why are simple methods desirable? What amount of knowledge of accounts should be possessed by those who use this book?

[6] Such as "Fundamentals of Accounting" by Koopman and Kester.

CHAPTER LXV

PRELIMINARY MATTERS

§ 561. Advice to the Accountant

Painstaking care is seldom so much needed as when dealing with a mass of papers accumulated by a man who is no longer living and who therefore cannot furnish a clue to any obscure meaning. In an excellent little book, which unfortunately is not of much service in this country because it deals with English law and English money, the following suggestions are offered to the accountant, public or otherwise, who intends to open a set of estate accounts:

> It may be assumed that all men, no matter how unmethodical they may appear, have a system of dealing with papers and documents; it may be a very bad and imperfect system, but it is there, and the accountant's first care must be to find it out, as, once found, it will materially assist him in understanding the testator's affairs. Sometimes it may not appear until weeks have been spent upon the papers, but there is little doubt that the system is there. First, it is desirable to run quickly through the papers, disregarding all which are manifestly irrelevant, then to classify the remainder, and, as far as possible, arrange them in order of date, then to proceed to reduce the information which they contain to notes, and it will be found that by patient comparison, an unfailing memory, and that trick which accountants acquire of recalling a figure which they saw an hour or a week before, it is possible eventually to construct a coherent account. Practice and the habit of concentration will enable the accountant to recall two or three amounts scattered over various papers and mentally adapt them to balance the sum of them which has appeared elsewhere. . . .
>
> One word of advice is desirable in conclusion—never to

> put hasty work into executors' accounts. There are so many points to be determined as to the proper destination of each figure, and there are so many subtleties which may be easily overlooked, that in this, as in so many cases, the safest motto is *"Festina lente."* [1]

§ 562. First Steps

The first thing of an accounting nature which the representative should do is to serve notice of the decedent's death upon all banks in which he had funds, in order that they may cash no more checks against his account, should any be outstanding. The bank accounts should be balanced immediately and, upon securing the bank statements and canceled checks, the statements should be reconciled in the usual manner.

If the decedent had a good set of books kept up to within a short time of his death, the work of the accountant and the representative will be noticeably easier. Soon after his appointment the representative should have these books brought fully up to the date of death and closed.

Much valuable information as to the decedent's affairs will be secured in this way if the work of closing the books is done thoughtfully instead of mechanically. Recent disbursements of the decedent should be examined to see if they will not disclose unknown assets; recent receipts may be partial payments of interest on unknown accounts receivable or may otherwise disclose valuable information.

§ 563. Briefing the Will

The first thing which an executor should do toward active work on the estate books is to analyze or "brief" the will, reducing it to a few short and intelligible sentences.

> It may not infrequently be desirable to obtain the advice of a solicitor to interpret some clauses in a will, but usually an accountant's knowledge is sufficient.[2]

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[1] Caldicott, Executorship Accounts.
[2] *Ibid.*

Care should be taken, however, to make sure that this is accurately done. An example of a brief of the long will shown in Form 1 follows:

ANALYSIS OF WILL OF HENRY H. BECKWITH

Clause	
1.	To Esther R. Beckwith, wife, use during her life of house, 91 West 72nd St., New York City, and of garage in said city, subject to taxes, water rates, and necessary repairs.
2.	To Esther R. Beckwith, wife, all linen, bric-a-brac, works of art, household goods and furniture (useful and ornamental), china, plate, silverware, books and pictures, and motor cars and appurtenances thereto belonging.
3. (a)	To Esther R. Beckwith, wife, use during her life, to extent of $3,000 quarterly, of income from such sum between $200,000 and $300,000, as in the opinion of trustees will be amply sufficient to produce annual income of $12,000.
(b)	To lineal descendants, equally *per stirpes*, use of remainder of income from above trust.
4.	To Henry H. Beckwith, Jr., son, parcel of land on which is summer home at Bristol, Massachusetts, all buildings, contents thereof and appurtenances thereto, and all land in town of Bristol.
5.	To Henry H. Beckwith, Jr., son, all jewelry, wearing apparel, personal ornaments, and effects.
6. (a)	To Rufus A. Beckwith, brother, income during his life from trust of $100,000.
(b)	To Maud Beckwith, sister-in-law, income during her life from trust of $50,000.
(c)	To June Stimson, cousin, income during her life from trust of $20,000.
8. (a)	To Syrian Protestant College, Beirut, Syria, $10,000.
(b)	To Stevens Institute, Hoboken, New Jersey, $10,000.
(c)	To Home for Incurables, New York City, $10,000.
(d)	To Hampton Institute, Virginia, $10,000.
9.	To all legatees, release from payment of any indebtedness due deceased.
10.	To Anne Bays, Helen Gardner, Mary Beckwith Cox, Henry Beckwith, Jr., children, use of income from re-

mainder until forty years of age; then one-half of principal of his or her share and use during life of income from other half, principal to be paid over as directed by will of each child or to child's heirs-at-law.

11. (a) To Charles A. Barnes, cousin, annuity of $3,000 to be paid semiannually during life.

(b) To Morton F. Barnes, cousin, the same.

(c) To Tuskegee Institute, Tuskegee, Alabama, principals of two funds furnishing annuities to Charles A. Barnes and Morton F. Barnes, to be paid upon termination of each annuity.

15. To Esther R. Beckwith, wife, all property not otherwise disposed of. (Residuary legacy.)

Special Stipulations

12. No amortization to be charged against life tenants.

13. Executors and trustees have power to continue any existing investment although of character not now permitted by law to trustees. May invest in real estate anywhere, or in bonds of any state or government (foreign included), or in bonds, notes, or other paper secured by real estate mortgage anywhere, or in any stocks or bonds of companies in United States or Canada in good credit and standing, or (with written consent of beneficiary) in any property whatever.

14. Executors and trustees may compromise and adjust any claim in any way.

16. No security required from any executor or trustee in any jurisdiction.

It is not a bad plan to copy this brief in the journal or other book of original entry, before any entries have been made. The will may then be put away in a safe place. The original of course will be probated, becoming a court record and therefore accessible, but the executor should preserve his copy to save time and avoid embarrassment.

> The will and the inventory comprise the basis for nearly all of the accounting, and no set of books is really complete without a copy of these documents.[8]

[8] Gottsberger, Accountant's Guide.

The administrator, having no will to go by, should familiarize himself with the law of distribution prevailing in the state of the decedent's residence. It does not pay to rely upon one's memory about this law because it is frequently amended in the different states.

Review Questions

1. What causes difficulty in dealing with the financial records of a decedent? How may a decedent's papers be classified?
2. What should be done first by an accountant for an estate? What should be done with the books of the decedent?
3. What is "briefing" the will? What is the object of briefing the will? Where may this brief be placed of record?

CHAPTER LXVI

THE ACCOUNT TO BE RENDERED

§ 564. The Final Accounting

The ultimate purpose of the keeping of estate accounts being, as has been said (see § 549), the fulfilling of the law's requirement that the personal representative file an accounting of his stewardship, it becomes necessary to understand the form of this accounting, the facts which it is required to show, and the conditions under which it is rendered, before one can adequately see the necessity for the many differences between commercial and probate accounting.

The accounting is rendered by the executor or administrator to the court which appointed him, and is usually made after the assets have been collected and the administration and funeral expenses and the debts have been paid, and such payments as the executor has found advisable have been made on account of legacies. Its purpose is to show the amount of cash and property received by the representative, the disposition he has made of it, and the balance, if any, remaining in his possession. The forms of accounting vary in the several states. Some of them are exceedingly simple statements of receipts and disbursements.

Ordinarily this accounting is the only one, and is called the "final" accounting, and on the basis of it the executor's accounts are judicially settled. But when the administration is prolonged or where special circumstances make it advisable, the executor may voluntarily render, or may be compelled to render, one or more intermediate accounts.

§ 565. Effect of Accounting

As an accounting, whether it is called "intermediate" or "final," is conclusive only as to matters stated in it and as to persons legally notified of it, no accounting can be considered absolutely final. Not infrequently there are several so-called final accountings in the administration of one estate.

After an accounting, it may be discovered that there are assets which the executor has overlooked, or that legal notice of the accounting was not given to all of those entitled to it, one of whom is disposed to resent the disregard of his rights. In such case the executor may be required to render a further accounting.

The matters as to which an accounting is conclusive in the absence of fraud or gross inaccuracy may be summarized as follows:

1. That the executor has been charged with all the money and property that could be discovered at the time of the accounting.
2. That all increases and decreases in the estate assets have been correctly calculated.
3. That the executor has been charged with all interest for which he was responsible.
4. That all payments made to creditors, legatees, or next of kin, and for administration expenses are correct.

§ 566. Time of Accounting

An intermediate account may be filed voluntarily by the representative at any time. A final account may be filed voluntarily at any time after the expiration of the period allowed for the administration of the estate. A compulsory intermediate or final accounting is a matter of statutory regulation and the laws of the several states must be consulted as to when such procedure may be ordered. Such an accounting is usually ordered when the executor has failed to account within a rea-

sonable time after the administration should have been completed. In some cases an account may be ordered on petition of a creditor or of a legatee whose claim or legacy has not been paid.

§ 567. Procedure in Accounting

The usual procedure is for the personal representative to present the account to the court with a petition that it be allowed, whereupon the court will notify all persons interested in the estate, that on a fixed day the account will be judicially considered. Prior to that day, the account on file with the court is open to inspection. After examining the account on the day named and considering any objections raised against it, the court will render a decision allowing, or refusing to allow, the account. If the account is not allowed, one satisfactory to the court must be presented. If the court is satisfied with the accounting it will issue a decree of distribution directing the executor to make distribution of the estate assets then remaining in his hands as set forth in the decree.

§ 568. Form of Account

It is rarely that the form of account is legally prescribed. The statute usually states broadly what the account shall show. This has resulted in practice in special forms for each state. These forms answer the local statutes and can usually be secured from the clerks of the probate court. In some states they are simply the cash receipts and disbursements, while in others they are more complex and go into greater detail. It always saves work in such matters to follow precedents and use whatever forms the local court approves.

§ 569. Vouchers for the Account

As in all legal accountings an executor is required to make an affidavit that to the best of his knowledge and belief the

statement rendered is a full and true account of all the assets that have come into his possession and of all his disbursements or disposition of them.

Vouchers are required for disbursements though in some states small payments to a limited amount are excepted from the rule. If any vouchers are lost the executor will be required to prove the payment by other evidence. The vouchers in due form should be filed in court with the account.

Review Questions

1. When is an accounting of administration made? What must it show? Distinguish between final and intermediate accounting.
2. As to what matters is an account conclusive? As to what people? When may a further accounting be required?
3. When may an intermediate account be filed? When a final account? Distinguish between a voluntary and a compulsory account. When may a compulsory account be ordered?
4. What is the usual procedure for an account? If the account is not allowed, what must be done?
5. In what form should an account be rendered? Have you a copy of the form used in your own state?
6. What evidence of the correctness of his account must the personal representative furnish? What is the usual rule as to vouchers?

CHAPTER LXVII

ACCOUNTS REQUIRED FOR ADMINISTRATORS

§ 570. All Accounts Should Be Based on Final Accounting

The accounts adopted for probate work are different from those in use in general mercantile bookkeeping, but they are easily understood and much less complicated. The accounts which are to be kept on the books of an estate should be chosen with the final accounting always in mind. They should be selected so that the schedules required to be filed with the court may be prepared with the least effort in collecting figures from various sources.

It may be interpolated here that if commercial books were kept more with the idea that the securing of information from them is the real end and the keeping of the books only the means to that end, we should have less red tape and more understanding of the vital part the accountant should play in the business organization, with a resulting greater willingness to furnish him with adequate tools and sufficient help.

Any scheme of accounts should be so planned as to yield most easily the information which is desired. Knowing exactly what will be required from a set of estate books, an account may be devoted to each of these items.

> It is very desirable that each schedule should be represented by an account in the books of the fiduciary; the name of the schedule may form part of its title.[1]

§ 571. Information Needed for Final Accounting

An examination of the summary at the beginning of Form 26 will show the information which will usually be required in

[1] Sprague, The Philosophy of Accounts.

the final accounting of an administrator. Separating corpus from income, this information may be summarized as follows:

As to corpus:

1. The amount of the inventory as appraised.
2. Assets discovered after the filing of the inventory.
3. Gain from realizing on the inventory.
4. Loss from realizing on the inventory.
5. Assets not realized upon.
6. Funeral and administration expenses paid.
7. Payments on debts of decedent.
8. Distribution of cash.
9. Distribution of assets other than cash.
10. Balance of corpus cash on hand.

As to income:

1. Income received.
2. Losses of income.
3. Expenses paid against income.
4. Distribution of income.
5. Balance of income cash on hand.

§ 572. Separation of Corpus from Income Advisable

Since in the case of an intestate a trust cannot be created except by the operation of dower or curtesy rights, the separation of corpus from income might seem unnecessary. This separation is, however, always wise for two reasons: (1) the inheritance tax laws apply only against the corpus, and (2) the administrator should be in a position to show easily what gains and losses have occurred as a result of his management and what are due to improper appraising.

§ 573. Other Accounts Needed

It has been said that one account should be maintained for each classification which will be needed for the final accounting, except when one is by nature the residue or balance

left in another, as in the case of Assets Not Realized Upon, which is the closing balance of the amount of the inventory as appraised. This number of accounts does not, however, quite exhaust the necessities.

The list above seems to include assets and liabilities, income and expense. But in double-entry bookkeeping there is another group, the net worth or proprietorship accounts, i.e., Capital, Capital Investment, Capital Stock, Surplus, etc., as may be required under varying circumstances. The place of this group in the scheme of estate accounts is taken by an account known as "Estate Corpus" during executorship or administratorship and "Estate Principal" during trusteeship.[2]

Whenever the books are closed, the balance of this account is the amount of the corpus of the estate in accordance with the various valuations used. Like proprietorship accounts it is necessarily a credit account, showing the extent of the accountability of the fiduciary.

The term "Cash account," as is used in this chapter, is generic. In practice it is found best to have a separate account for each "active" bank account, i.e., for each bank account which is to be used for current depositing and checking purposes. Inactive bank accounts, such as savings accounts, may, if desired, be totalled together in one ledger account.

Emphasis has been placed on the separation of corpus and income, but further than this, because the preparation of income tax returns requires an analysis of the income, the books must show the source from which it is derived, not, for this purpose, by personal accounts, but in a way that will indicate the nature of the transaction from which it results. In the same way, for income tax purposes the expenses must be analyzed in order that in the returns the schedules accounting for the deductions from gross income may properly be filled out.

[2] This distinction between the use of the two names of the account is not rigidly followed, many authorities seeming to use the names interchangeably.

This information in the ordinary estate can easily be secured by going through the Income account at the end of the year and ascertaining how much of the income was received from rent, how much from interest, etc., and by analyzing the Funeral and Administration Expenses account to show how much was spent for repairs, how much for office supplies, how much for attorney's fees, etc.

In a large estate where the transactions are numerous, it will be found much easier to open separate accounts for all the items of most frequent occurrence instead of lumping all income into one Income account and all expense into the Funeral and Administration Expenses account.

§ 574. Liabilities

> A fact which will strike the commercial bookkeeper upon examining an executor's account is that the inventory upon which it begins is an inventory of assets only, no reference being made to indebtedness even if shown on the books of the decedent, and no deduction being made for them. Debts only appear thru their payment.[8]

This is a very important distinction. Where in commercial practice it is considered essential to enter liabilities as they are incurred, in probate practice the account known as "Debts of Decedent" is debited as payments are made in full or on account, no counter-entry being made until the Debts of Decedent account is closed at the time of rendering an accounting.

The theory upon which this procedure is based is that the books of the estate represent the liability of the personal representative rather than the net worth of the estate, and that the representative is liable to the proper persons, not for the net value of the estate, but for the amount of the assets which have been turned over to him. The only variation from this feature is in the entry on the books of real estate which does

[8] Sprague, The Philosophy of Accounts.

not come into the hands of the executor, but passes immediately to the legatees or heirs-at-law. (See § 615.)

The Federal Income Tax Law requires that mortgaged and pledged property be inventoried at its gross value and that the amount of the liability thereon be shown separately as a deduction. For this reason it has been recommended (see § 342) that the inventory which is made for all purposes include the real estate at its gross value, the mortgage indebtedness being considered a debt of the decedent. This is important for the further reason that the representative is entitled to his commission on the gross as well as the net value.

§ 575. Uses of Accounts

The following synopsis presents the uses of the accounts:

Debited With	CASH	*Credited With*
Cash included in inventory and all receipts.		All disbursements.

CORPUS GROUP

INVENTORY

Appraised value of corpus of estate.	Appraised value of each inventoried asset turned into cash, distributed, or otherwise disposed of.

ASSETS NOT IN INVENTORY

	Amount realized from all after-discovered assets.

GAIN ON REALIZATION

	Difference between appraised value and selling price of assets sold above appraised value.

Loss on Realization

Debited With	*Credited With*
Difference between appraised value and selling price of all assets sold below appraised value; appraised value of assets stolen, destroyed by fire, etc.	

Funeral and Administration Expenses

All allowable funeral expenses and all just charges for administering the estate. (See §§ 265, 268, and 592.)	

Debts of Decedent

All payments made on indebtedness existing at decedent's death. (See §§ 574, 599.)	

Distribution of Cash

Amounts of cash distributed. (See § 594.)	

Distribution of Assets Other Than Cash

Appraised value of other assets distributed. (See § 594.)	

Estate Corpus

	The appraised value of the inventory.

INCOME GROUP

INCOME

Debited With	*Credited With*
	All receipts of income. (See § 598.)

LOSS ON INCOME

The amounts of all income lost by theft, fire, or other casualty.	

EXPENSE, INCOME

All expenses which are just charges against the income. (See § 600.)	

DISTRIBUTION OF INCOME

Amounts of income distributed.	

§ 576. General Scheme

The handling of the transactions under such a scheme of accounts is as follows:

At the beginning of the administration the estate assets are debited to Inventory, and the total amount of them is credited to Estate Corpus. The amount of cash in the inventory is credited to Inventory and debited to Cash.

Subsequent receipts of cash by the administrator are debited to Cash. If they are from the sale of assets included in the inventory they are credited to Inventory to the amount of the appraised value, any increase therein being credited to Gain on Realization, or any loss thereon debited to Loss on Realization. Receipts from the sale of assets which, although they belonged to the decedent at the time of death, were for some reason not included in the inventory, are credited to Assets

Not in Inventory. Receipts of income earned by the estate assets during administration are credited to Income.

Payments of cash or distributions of assets made by the administrator are credited to Cash or Inventory. Payments made on account of debts existing at the time of the decedent's death are charged to Debts of Decedent. Payments of expenses which are deductions from the corpus of the estate are debited to Funeral and Administration Expenses. Payments of expenses which are to be deductions from the income are charged to Expense, Income. Losses of income from theft, etc., are debited to Loss on Income. Cash divided among the heirs-at-law is charged to Distribution of Cash if it is from corpus or to Distribution of Income if from income. Other assets divided (if from corpus, as is usually the case) are debited to Distribution of Assets Other Than Cash. If this is all done accurately the books are in shape for closing.

§ 577. Method of Closing

When an accounting is to be made the books should be closed. (See Chapter LXXI.) In brief, the closing is effected by:

1. Crediting Estate Corpus and debiting the corpus gain accounts (Assets Not in Inventory; Gain on Realization) with amounts sufficient to balance the latter.
2. Debiting Estate Corpus and crediting the corpus loss accounts (Loss on Realization; Funeral and Administration Expenses; Debts of Decedent; Distribution of Cash; Distribution of Assets Other Than Cash) with amounts sufficient to balance the latter.
3. Debiting Income and crediting the income loss accounts (Loss on Income; Expense, Income; Distribution of Income) with amounts sufficient to balance the latter.

§ 578. Subdivision of the Inventory Account

As one of the principal functions of a representative (see § 115) is to realize on the assets, the accounting scheme should be so arranged as to record the process and progress of realization. For this reason the cash is separated from the other assets and removed to a separate account, although it is at first included in the Inventory account.

> The two accounts "Cash" and "Inventory" represent the executor and all the others represent the estate.[4]

Some writers [5] on this subject have recommended the further subdivision of the Inventory account into accounts with the various groupings used in the inventory (see § 281), but with the exception of cash, it is hard to see what good can result from this. A realization account can be kept without such subdivision. In commercial practice the various assets would of course be treated through separate accounts, but the purpose of commercial accounts is not the same as that of estate accounts, and the end for which the work of accounting is done should always be kept in mind. The law of no state requires such subdivision on the books, and it is not seen what labor is saved or what good is accomplished by this subdivision of the inventory beyond a separation of cash, since the form of the realization account required in no state makes necessary an accounting for the inventory by groups, whereas all states require an accounting for each item. This can more easily be kept through a work sheet which forms a subsidiary ledger to the Inventory account as a whole. (See § 585.) But if this subdividing is indulged in at all, it should be with reason and not by an arbitrary division of each group of inventoried assets into an account. If there were only three accounts receivable, one listed on the inventory under Accounts Receiv-

[4] Sprague, The Philosophy of Accounts.
[5] Especially Baugh and Schmeisser in Theory and Practice of Estate Accounting.

able, *Sperate,* one under Accounts Receivable, Doubtful, and one under Accounts Receivable, *Desperate,* it would be absurd to open a ledger account for each of these classifications.

To make a reasonable subdivision the inventory must be analyzed and the assets divided into groups so that the accounts in which they are to be carried on the books will present a logical classification of the items without burdening any account and without making so fine a division that the books will be overburdened with accounts to which there will be but few entries. To give an exaggerated example, in the case of an estate not much of which was invested it would be entirely permissible to carry all the invested assets in an Estate Investments account; for another estate it might seem to be desirable to divide this account into Stocks and Bonds, and Real Estate Mortgages; in another estate it might seem wise further to divide the former of these into two accounts, one for stocks and one for bonds; in a third the latter of these two subgroups might be contained in three accounts called "Railway and Industrial Bonds," "Municipal Bonds," and "Liberty Loan Bonds."

A sense of proportion must be applied in such matters if the bookkeeping is to be free from unnecessary labor. The accounts must be so chosen that there will be a balance between the work involved in obtaining detailed information from memorandum records or subsidiary ledgers on the one hand and the extra labor caused by increasing the number of general ledger accounts. Under this plan far more accounts are usually necessary for the administrator or executor than for the trustee, as the former usually has to realize on many assets, turning them into cash and perhaps investing this cash permanently, whereas the trustee has only such assets as are considered worth retaining as permanent investments. The administrator will, for example, have debts receivable which will ordinarily be closed out before the trustee takes hold.

§ 579. Summary.

It is believed that enough has been said above to explain the general theory of the use of all the accounts necessary in estate books. These accounts are designed to record the fulfilment of the functions of an administrator, which have been analyzed as follows:[6]

Realization of appraised value of assets:

Cash	$.....	
Inventory		$.....

Realization of excess above appraised value:

Cash	$.....	
Gain on Realization		$.....

Realization of deficiency below appraised value:

Loss on Realization	$.....	
Cash		$.....

Realization of assets not inventoried:

Cash	$.....	
Assets Not in Inventory		$.....

Collection of income:

Cash	$.....	
Income		$.....

Expense against income:

Expense, Income	$.....	
Cash		$.....

Expense against corpus:

Funeral and Administration Expenses	$.....	
Cash		$.....

[6] This analysis is suggested by Charles E. Sprague, in The Philosophy of Accounts, but is changed here to agree with the names of accounts used in this work, whereas Sprague uses only schedule numbers.

Payments on indebtedness existing at decedent's death:

Debts of Decedent.....	$.....	
Cash		$.....

Distribution:

Distribution of Cash, Distribution of Assets Other Than Cash or Distribution of Income	$.....	
Cash or Inventory.....		$.....

Loss on income:

Loss on Income	$.....	
Cash or Inventory.....		$.....

Review Questions

1. What determines the accounts to be used for an estate? What does the word "schedule" mean in this connection?
2. Into what two divisions are probate accounts divided? What are the accounts under each head?
3. Why is the separation of corpus from income always desirable?
4. What account in probate work answers to the proprietorship accounts in ordinary accounting? What is the balance of this account?
5. Why are liabilities not entered on estate records? Why do not the books show the net worth of the estate? Why is real estate entered at its gross value?
6. What accounts are used and with what is each account debited and credited?
7. What are the initial debits and credits? How are cash receipt items treated? How are cash payment items treated?
8. What are the successive steps in closing the books?
9. How far should the Inventory account be subdivided in probate work? On what does reasonable subdivision depend? Why does a trustee have fewer accounts than an executor or administrator?
10. Is there any difference in the forms of entries given for estate accounting and the usual double-entry system?

CHAPTER LXVIII

BOOKS TO BE KEPT BY ADMINISTRATORS

§ 580. Form Not the Most Important Thing

The form of the books in which the financial records of the estate are kept is not so material as is the correct use of the accounts. Probate accountancy presents to the commercial bookkeeper a new nomenclature for the nominal accounts, and some new practices in such matters as the handling of liabilities, etc., but so long as these are understood and properly handled, the merely mechanical vehicles used for the recording of the transactions are a matter of personal preference. No objection can be raised to the forms used in any system if through them one may accomplish the desired result, but it is believed that the greatest efficiency will be found in the forms suggested and consequently a certain emphasis is laid upon them.

§ 581. Single Entry Not Suitable

If the estate is small and the provisions of the will are not complicated by the establishment of any trusts of unusual difficulty in handling, the opinion has been prevalent that the accounts may be kept by single entry with entire satisfaction. There is, however, no case so simple that a properly adapted form of double-entry bookkeeping cannot be used more easily in the long run and to greater advantage than single entry.

The requirements of the income tax laws can be met more readily by double entry, which has therefore become more important within recent years. Double entry has the further advantage that it recognizes, while single entry ignores, the dual nature of all transactions, i.e., the fact that if money comes in there must be a source; if it goes out there must be a destina-

tion—if any change occurs there must be an equal "change from" and "change to." The purpose of the nominal accounts which distinguish double entry from single entry is to collect under distinct classifications assets of certain natures, liabilities of particular kinds, income from certain sources, and expenses for different things.

> Pure single entry is limited to personal accounts, but in its practical application a Cash account is usually kept. There may be other impersonal accounts of a memorandum nature, such as Sales and Expense; but, when any impersonal accounts are introduced the system is no longer pure single entry.
>
> Single entry, therefore, does not record equal debits and credits for each transaction, it does not provide for a trial balance, it does not furnish adequate checks on the accuracy of the work on the books of account, and it gives no organized information of the elements of operation.[1]

In fact it may be said that a single-entry system is no system at all, but merely a makeshift.

§ 582. The Self-Posting Ledger, Journal Ledger, or Synoptic

There is a form of account book which has won much favor in England and Canada and in some parts of the United States (especially in Ohio), and which is especially adapted to the accounts of administrators and trustees. This form (see Form 26) has all the ease of single entry with none of its disadvantages. It will be seen that this consists of a many-column journal having one or two columns devoted to each account, so that the book becomes a cash journal of such complete distribution that all the ledger accounts are represented therein. Any 24-column double-page columnar sheet, fitting an 11 x 17 binder, will provide ample space for all contingencies.[2] In the case presented here only 21 columns are used.

[1] Walton, Advanced Accounting.

[2] Some states forbid the use of loose-leaf books by fiduciaries. A 20-column bound cash journal will serve fully as well.

Such a book is called a "self-posting ledger," a "journal ledger," and various other names, but of all which have been suggested, "synoptic" is probably the best, being short as well as descriptive. The word is derived from the same Greek root as is "synopsis" and is a substantive use of the adjective "synoptic," which Webster defines as: "Affording a general view of the whole, or of the principal parts of a thing."

The accounts of trust companies are coming to be generally carried on such a form as this.

§ 583. Principle of the Synoptic

The synoptic is essentially a double-entry book. Each line must contain equal debits and credits if the record is to be true. Entry No. 1, for example (Form 26), shows a debit of $2,100 to Cash and a credit of the same amount to Inventory. Expressed in journal form this entry would be:

Cash, Dr.	$2,100.00	
Inventory, Cr.		$2,100.00

Entry No. 26 shows a debit to Cash of $9,500, a credit to Inventory of $9,000, and a credit to Gain on Realization of $500. In journal form it would be:

Cash	$9,500.00	
Inventory		$9,000.00
Gain on Realization		500.00

Since in every entry we have equal debits and credits, on each page we will have a total of debits equal to the total of the credits, because of the algebraic theorem that, if equals are added to equals, the sum will be equal. Therefore the sum of the page totals of all the debit columns *must* equal the sum of the page totals of all the credit columns, with the result that the sum of all the debit balances in the book must equal the sum of

all the credit balances. The trial balance is thus taken directly from the synoptic.[8]

§ 584. Advantages of the Synoptic

The synoptic has three marked advantages:

1. It is easy to learn to use. The bookkeeper who has never acquired the cash journal habit may prefer to use the old-fashioned cash book and journal, making postings to his ledger in the usual way. If, however, he has begun to use an "analytical" or columnar cash book, i.e., one in which several columns are provided for entry of receipts or disbursements directly to the most commonly used accounts, he will have no trouble in adapting himself to this much less tedious method. If the person who is to keep the accounts is not a bookkeeper by occupation, and has acquired no definite habits which the bookkeeper so often finds it hard to break, he will find the method outlined to be a much easier one to learn than the use of the older separate cash book, journal, and ledger.

2. It involves less work than any other method. Fewer pages have to be turned. An entry made in one record is not recopied in others, for the use of the synoptic makes general ledger posting unnecessary. All the accounts are carried on the double page and the difference between the debit and credit totals of any account at any time is what would be the ledger balance of that account.

> It is an advantage to have full details upon the face of each Ledger Account, and, unless the entries are very numerous, it is better to make the whole in one book, which thus becomes Journal, Cash Book and Ledger in one. . . . Where a Journal is used there is a tendency to exclude the information from the Ledger Accounts, and the necessity for constant reference hampers an accountant when he desires to extract information, while it reduces what should

[8] In referring to Form 26, it should be noted that the columns headed Entry No. and See Section are inserted merely for convenient reference in the text.

be perfect simplicity to hopeless confusion, when the accounts are submitted to an executor or legatee.[4]

3. It makes the understanding of the entries and the explanation of them to other persons much easier than the use of the cash book, journal, and ledger, because all the transactions of a period are before one's eyes at a glance, with their effect on the ledger accounts, the condition of all of which can be readily grasped without the turning of pages.

The next chapter presents a set of transactions of a typical administratorship carried through the synoptic.

§ 585. The Realization Account

No matter what style of books is adopted, there should be kept as a subsidiary record a list of the inventory items with the appraised value of each. Maintaining general ledger accounts with each group of inventory assets (see § 578) will not serve the purpose, because the schedule required for the final accounting must, to be complete, show the realization on each sale. (See § 555.) Even if this were not so, it is necessary to keep this record in some form for convenient reference as to what is unsold and to facilitate an audit of the accounts, whether by an interested person or a professional accountant.

This detail of the realization on the assets is most easily shown by a schedule in six columns (see Form 27), the first containing the value of each asset (including cash) as appraised in the inventory; the second showing the amount of cash realized from each asset; the third, the difference between the first and second if the amount in the second column opposite the item is lower than the amount in the first (see § 603, "Loss on Realization"); the fourth, that difference when the amount in the second column opposite the item is higher than that in the first (see § 603, "Gain on Realization"); and the

[4] Caldicott, Executorship Accounts.

fifth, the appraised value of assets distributed without realization or of deferred expenses charged against income. (See § 608.) When it is desired to close the books it is necessary to carry over to the sixth column the appraised value of all the assets which have not been disposed of. The total of this column, plus the totals of the second, third, and fifth, minus the total of the fourth, *must* equal the total of the first, if no error has been made in recording or adding.

The Realization account thus prepared has been spoken of above as a "subsidiary" record. It is subsidiary to the Inventory account on the general ledger. This means that the difference between the total debits and the total credits in the Realization account must always equal the balance in the Inventory account. In other words, the sum of the totals of the entries made in the first and fourth columns at any date, minus the sum of the totals of the second, third, and fifth, would be the total of the sixth if it were filled in, and also the balance in the Inventory account on the general ledger or synoptic at the same date, since that is the appraised value of the unsold assets on that date.

Some accountants have felt that the keeping of the Realization account in addition to the careful record of the synoptic or other set of books involves unnecessary duplication. It is doubtful if this is true. The Realization account shows at a glance the assets which have and have not been disposed of, two things which the executor would otherwise have to search out frequently unless he checked a copy of the inventory as he disposed of the assets, a method which would easily lead to errors because of the lack of a reconciliation with the general books. The keeping of the Realization account has the further advantage that the most difficult schedules of the final accounting are thereby prepared, whereas otherwise the information for those schedules would have to be separately secured at the time of closing. The Realization account is a schedule show-

ing the amount realized on each of a list of assets; the general books are a financial history.

§ 586. Assets Not in Inventory

It is rarely possible at the beginning of an administration to discover all the property of the decedent. Very often there are accruals of various sorts which are unknown to the executor until he begins to collect the assets. Sometimes an entire bank deposit will be unknown at the time the inventory is prepared.

Such after-discovered assets may be handled in the same manner as inventoried assets, and in fact are most advantageously handled by an extension of the same form. (See end of Form 27.) For after-discovered assets the amount shown in the first column is the amount realized upon a sale, if the asset is sold, or, in other cases, the fair market value.

There will thus be no gain or loss on the realization of after-discovered assets except in cases of theft, fire, etc., because the valuations at which they are to be charged in are not entered until they are disposed of and the charging-out values determined. Each such asset should be listed for memorandum purposes as soon as discovered, although the value will probably not be added until later. If the asset is not disposed of before the books are closed, the procedure outlined in § 627 should be followed.

§ 587. The Check Books

The check stubs should show the number of each check, its date, the name of the payee, the description or the nature of such payment, and the amount, as for instance: "No. 1, April 25, 1900, Smith and Jones, Undertakers, bill dated March 25, $1/5."

By thus depositing all moneys belonging to the estate in the bank account of the estate and by making all payments

on account of the estate by checks on the same bank account and making the necessary entries in the check book, the executor will have a complete record of all his receipts and disbursements in his check book.[8]

§ 588. Diary

The representative should record in a diary the details of all important events, so that he will always have at hand memoranda from which he can refresh his memory when necessary. The notations in this book should be cross-referenced to entries on the books of account and to the folios of other estate files or public documents. By this practice much time will be saved in locating the records which have to do with the notations.

Examples of the information which should appear in the diary are:

1. Date of reading of will.
2. Steps taken by personal representative before formal appointment.
3. Date of employment of counsel and reasons for choice, with notations as to agreement for compensation.
4. Efforts to locate heirs or proper distributees.
5. Efforts to collect assets.
6. Details of conversations with attorneys, inheritance tax officers, etc.
7. Dates of signing of various court orders, such as that requiring advertising for claims.

It is a good practice to paste in the diary printed copies of all notices, advertisements, and announcements incident to the probate and subsequent procedure.

§ 589. Other Books

Innumerable other records might be suggested. Memoranda should be kept showing when interest, rents, etc., both

[8] Gottsberger, Accountant's Guide.

receivable and payable, are due. Larger estates require the use of investment record books, notes payable registers, etc. As none of these are in any way peculiar to estate accounting they will not be discussed in detail, although a few forms of additional records are described in § 697. The fiduciary who is handling an estate whose affairs are so complicated as to necessitate the use of such records as these, would do well either to make sure that he has a competent bookkeeper or to arrange for the services of public accountants along one of the lines suggested in § 559.

Review Questions

1. Is the choice of forms used in probate accounting of vital importance? What is the object of the books that are kept?
2. Why is double entry superior to single entry?
3. Describe the form of book recommended in this work. What are three of the many names given it?
4. Describe how the double-entry principle is utilized in the synoptic?
5. Give the three advantages of the synoptic.
6. What is the object of a realization account? How are six columns used to keep this account? How do they balance when correctly kept? To what is the realization account subsidiary? What are the advantages of the realization account?
7. How may assets not in inventory be shown in the realization account?
8. How should check stubs be kept?
9. Why should a diary be kept? What should be recorded in the diary?
10. What other records may be kept?

CHAPTER LXIX

TYPICAL ENTRIES FOR THE ADMINISTRATOR

§ 590. Purpose of Chapter

In this chapter the transactions which most commonly occur in the handling of an administratorship are given, together with the accounting entries necessary to record them. It is improbable that all the conditions presented here would exist in any one case. On the other hand, to present all the transactions which might occur would be an interminable task. An effort has been made, however, to suggest the proper manner of recording other complications that may arise.

Some of these transactions, applied to the estate of an intestate who died on October 15, 1919, are shown recorded on the suggested form of books of original entry (see Form 26), in order that the manner of keeping the books may be made as clear as possible. No effort is made to carry the books of an estate through from the demise to the final accounting. The entries given have, on the contrary, been restricted as nearly as possible to one of each kind in order not to overburden the text. In studying them it must be borne in mind that these are but scattered transactions, shown to make clear the use of the synoptic rather than to attempt to show the complete record of an estate. Each transaction shown is commented on in the text, and references are made to the earlier sections of this work which give explanations of the rules of law, principles of accounting, or customary practices involved in the transactions and the records of them. Cross-references are given to other sections dealing with related matters.

In all that follows in reference to the handling of the ac-

counts of an estate, no suggestions will be made as to what payments may be made or when they may be made, as these points have been separately treated in connection with the examination of the law earlier in this work. The instructions given for the entry of various transactions on the books presuppose the proper authority from court or statute, and in this study of accounting methods it is not to be assumed that, because attention is not called to the necessity for obtaining the permission of the court to perform certain acts, there is no necessity for obtaining such permission.

§ 591. Entries Before Appraisal

Theoretically the inventory should be the first thing to appear on the books. However, it will usually be necessary to enter various transactions before the appraisal is completed. Examples of this are the first seven entries presented herewith. (See Form 26.) Although the transactions shown are not presented in strict chronological order, these seven may be considered as a group by themselves.

The first of these represents the receipt of a dividend on the day following the decedent's death. It has been explained (see § 575) that the Inventory account is to be debited with the appraised value of the corpus of the estate, and that it is to be credited with the appraised value of each inventoried asset turned into cash, distributed, or otherwise disposed of. If the inventory had been completed, all would be simple in the matter of this dividend. The entry would be simply:

Cash	$.....	
Inventory		$.....

The inventory not yet having been taken, however, the same entry will be made (Entry No. 1 on Form 26), but it becomes incumbent upon the administrator to see that the figure which he has credited to Inventory account is the figure at

which the dividend is computed in the appraisal, as otherwise his Inventory account will not clear itself at the time he renders his account.

Entry No. 5 shows similarly the receipt of proceeds of a life insurance policy.

§ 592. Funeral and Administration Expenses

Entry No. 2 shows a typical payment of an administration expense. The law defining such expenses is set out in §110. A payment of funeral expenses is shown in Entry No. 7. Entry No. 19, for repairs to an automobile, is a proper charge against this account because the repairs were made with a view to increasing the price for which the car could be sold.

These entries will serve to show also the manner in which all disbursements are handled on the books, the amount paid being entered as a credit to Cash and a debit to the account which is to be charged with the amount of the disbursement.

It is wise to provide on the synoptic for refunds of overpayments on administration expenses. These are likely to be somewhat numerous. The personal representative may have paid rent in advance and, upon not needing the rented property the full period, may receive a refund. Such a transaction would be recorded as:

Cash	$.....	
Funeral and Administration Expenses.		$.....

To accommodate such entries the latter account on the synoptic is provided with two columns, the second of which is for the credit entries.

§ 593. Taking Over Decedent's Bank Account

As soon as the administrator secures his letters testamentary he should present them at the decedent's bank and secure possession of the decedent's funds. The entry in this case

is like the one described in § 591 above, in that the asset has not yet been inventoried, and the same principles will apply, the entry being (No. 3):

Cash	$.....	
Inventory		$.....

When it is possible to adopt the theoretically correct practice of entering the inventory first, this entry should follow immediately thereafter.

If a separate cash book, journal, and ledger are used, and entries like the one described in §592 above are necessary before appraisal, it is customary to leave the first line on the debit side blank in order that the amount of cash on hand at the time of death may be entered as soon as it is determined by the inventory. In such cases the bookkeeper may elect to have the cash book show only the active or checking bank accounts so as to carry nothing but the funds available for current use. All inactive deposits, such as savings accounts, will in that event be represented on the ledger by separate accounts.

In using the synoptic, the inactive bank accounts are carried in one pair of columns. The transfer of a savings account from the inventory is shown in Entry No. 4.

§ 594. Distribution of Cash and Other Assets

If the estate funds are sufficient and there seems to be no doubt of the estate's solvency, the administrator may be willing to pay to the heirs reasonable advances on the final distribution. These payments are entered as follows (No. 6):

Distribution of Cash.....	$.....	
Cash		$.....

The law in reference to such payments has been set out in Chapter XVII. The administrator must remember to deduct the state inheritance taxes from the amounts which he can dis-

tribute and not to allow the payments to exceed the difference. The usual practice in making advance distributions is to divide a certain amount among the heirs in proportion to their respective rights in the total which will eventually be distributed to the legatees.

If one of the heirs, with the proper consent, takes over at the appraised or other value any of the assets other than cash distributed, receiving these in lieu of his regular distributive shares, such a transfer is to be considered a sale of the asset to the heir. In such cases it is always best, in order to make the record complete, to issue to the heir a check for the amount of the sale, if the administrator is willing not to require the heir to pay out his own money. The heir may then issue his own check or indorse the check just received, in either of which cases the administrator will deposit the amount received. Such a transaction is shown by Entries Nos. 21 and 22.

§ 595. Outstanding Checks of Decedent

Since any checks issued by the decedent prior to his death become void if not presented for payment before the bank on which they were drawn learns of the demise (see § 297), the amounts which they represent become debts of the decedent payable out of corpus. In Entry No. 8 the administrator records the taking up of a check outstanding at the time of the demise by one drawn on the estate funds. The entry is:

Debts of Decedent.....	$.....	
Cash		$.....

§ 596. Entering the Inventory

The entry setting up the inventory on the books will be made in the following form (Entry No. 9):

Inventory	$.....	
Estate Corpus		$.....

This is done in order to show in one account the charging of the representative with the amount of the inventory, since the first item in the final accounting (see § 632) will be the charge for the amount of the original inventory. (See Form 28.)

The use of the Inventory account has been explained in § 575, and the manner of entering assets realized upon in advance of the completion of the inventory has been set forth in § 591. As has been said, care must be taken to see that the credit given to the Inventory account at the time of realizing upon each asset is the same as the amount with which the Inventory account has been debited for that asset, i.e., its appraised value. If this is not done the accounts will not close out properly to show the necessary clearance for the executor or administrator.

For this reason it is wise at the time of entering the inventory to examine the credits (Entries Nos. 1, 3, 4 and 5) which have previously been passed to the Inventory account to make sure that all the items have been credited to that account at the figures at which they were included in the inventory. In the present instance, if the life insurance policy had erroneously been inventoried at only the principal of $5,000, the dividend of $177.69 having been ignored, it would now be necessary to make a correcting entry for the difference

Cash	$177.69	
Gain on Realization		$177.69

or else to correct the previous entry so that it would read

Cash	$5,177.69	
Inventory		$5,000.00
Gain on Realization		177.69

The credit to Gain on Realization account instead of to Assets Not in Inventory is suggested on the theory that the policy and the dividend are one, worth $5,177.69 instead of $5,000.

§ 597. Payments on Taxes on Real and Personal Property

There is no apportionment of taxes between corpus and income, as they are regarded as absolute debts at the date of their assessment. (See § 205.) For this reason payments of taxes assessed prior to the death of the decedent, whether or not actually due before the demise, are debited to Debts of Decedent (Entry No. 10). Taxes assessed after his death, however, are debited to Expense, Income (Entries Nos. 24 and 33).

Since the realty usually passes directly to the heirs without coming into the estate, the only real estate taxes to be paid by the administrator are those assessed prior to the date of death. The date of assessment is generally construed as being the date on which the levy was certified to the assessing officer or was adopted by ordinance or statute, as may be the case in the particular jurisdiction.

We have, then, the following summary of the transactions having to do with the local property taxes:

Tax for last half of 1918. Assessor's valuation placed in spring of 1918; tax levied in fall of 1918 (before demise). Due fall of 1919: personalty, $2,758.41; realty, $1,243.69; both charged to Debts of Decedent (Entry No. 10).

Taxes for 1919. Assessor's valuation placed in spring of 1919; tax levied in fall of 1919 (after demise). First half due spring of 1920: personalty, $3,012.26, charged to Expense, Income (Entry No. 24); realty, $1,299.91, paid by heirs. Second half due fall of 1920: personalty, $3,012.26, charged to Expense, Income (Entry No. 33); realty, $1,299.91, paid by heirs.

§ 598. Income

Entry No. 11 shows the credit for the semiannual interest on the savings account in the Montrose Trust Company. The part of this interest which had accrued prior to the decedent's death on October 15 must be handled on the books separately

from that which was earned after that date, the former being a part of the corpus (see § 307) and included in the inventory, and the latter being income.[1]

Therefore the entry for the interest is:

Cash	$60.00	
Inventory		$35.00
Income		25.00

Entries Nos. 12 and 13 show the receipt and division between corpus and income of two other items of interest. In Entry No. 25 there is shown the receipt of interest, none of which had accrued prior to the decedent's death.

> The Income Account . . . tells its story (which commences from the death) and shows what income was produced by the estate, and from what source income was derived.[2]

§ 599. Debts of Decedent

The executor is now ready to begin paying ordinary claims against the estate. (For law, see Chapter XIV.) Entry No. 14 is typical of the payment of a simple debt which had been incurred by the decedent:

Debts of Decedent	$.....	
Cash		$.....

§ 600. Expense Against Income

Just as interest receivable which had accrued before the decedent's death is corpus and that accrued after the demise is income, so interest payable accrued before the decedent's death is a charge against corpus (debited to Debts of Decedent) and that accrued after the demise is a charge against income (debited to Expense, Income). Entry No. 15 shows the

[1] The state laws as to the computation of interest should always be followed. The federal law and the statutes of many states require that the 365-day basis be used.
[2] Caldicott, Executorship Accounts.

payment of a mortgage note for $1,000, the interest of $30 having accrued as follows:

July 6, 1919, to Oct. 15, 1919	$18.33
Oct. 16, 1919, to Jan. 5, 1920	11.67

The amount of the charge against corpus is then

Principal	$1,000.00
Interest to Oct. 15, 1918	18.33
	$1,018.33

and the entry becomes:

Debts of Decedent	$1,018.33	
Expense, Income	11.67	
Cash		$1,030.00

There are in this transaction two possibilities of confusion. It is presupposed that the decedent had purchased certain realty, making a partial payment and giving a note secured by mortgage for the balance. The law relating to this condition is set forth in § 127. The decedent owned the real estate, but the unpaid portion of the contract price is a debt and, like any other debt, must be paid out of the personal property of the estate. Under no circumstances is it to be considered a further investment in real estate. If the other real estate of the decedent was included in the inventory, this should also have been, not at the cost of the equity, but at the appraised value of the property.

Many persons are confused as to the justice of charging against income the interest accruing after the testator's death. They would argue that the persons entitled to the income should not have to pay this interest, as it is not a cost of collecting or handling the income. The law takes cognizance of the fact that if the interest-bearing indebtedness had been paid off, it would in all probability have been from money secured by the

sale of an income-producing asset, thus reducing the income which would have been distributable. Therefore this interest, by the payment of which other funds are left free to draw income, is charged against income.

§ 601. Payment of Tax on Decedent's Income

The federal and any other income taxes owed on account of the decedent's income before his death are considered a debt as of that time and as such are deductible in determining the amount of the taxable estate. (See § 267.) For this reason their payment is charged to Debts of Decedent (Entry No. 16).

Income taxes against the income of the estate, however, are expense against income, but the federal tax is not an expense deductible in determining the amount of that income for purposes of ascertaining the amount of that tax. The administrator must usually file two federal returns of income for the estate, as no return may cover a longer period than twelve months. The law regarding the federal income tax and the need for the representative making sure that the returns are properly filed and the tax fully paid are shown in Chapter XXVIII.

The tax when paid is a charge against income, and is recorded by the entry:

Expense, Income	$.....	
Cash		$.....

§ 602. After-Discovered Assets

The entry in the case of after-discovered assets (see § 586) is always (No. 17)

Cash	$.....	
Assets Not in Inventory		$.....

for the amount which is realized if they are sold. If not sold the procedure outlined in § 627 should be followed.

Entry No. 18 assumes that the Montrose State Bank has called the attention of the executor to the existence in the decedent's name of a savings account of $1,000, not included in the inventory. The interest for the past six months, amounting to $20, must be divided between corpus and income as in the case of other interest income, but since the interest accrued to the date of demise was not included in the inventory, it as well as the principal must be credited to Assets Not in Inventory. The entry is then:

Savings Accounts	$1,020.00	
Assets Not in Inventory		$1,011.67
Income		8.33

§ 603. Gain or Loss on Realization

If an automobile entered on the inventory as being worth $1,000 is sold for $1,200, the following entry (No. 20) is necessary:

Cash	$1,200.00	
Gain on Realization		$ 200.00
Inventory		1,000.00

The same principle must be followed in reference to any sale for other than the appraised value. If this automobile had been sold for $800 the entry would have been:

Cash	$ 800.00	
Loss on Realization	200.00	
Inventory		$1,000.00

In other words—and this should never be lost sight of—the Inventory account must be credited with the inventory value of each asset disposed of, as only in this way will the Inventory account close out with the assets.

§ 604. Payment and Collection of State Inheritance Taxes

As has been said, state inheritance taxes are to be deducted from the amount which would otherwise pass to each heir. A

deposit of the estimated amount of such taxes may be required by the state in advance of distribution. In the estate under consideration it is assumed that it has been estimated that the tax will amount to about $2,000 and that under the law the administrator is required to deposit this amount, subject to correction when the true amount of tax shall have been determined and assessed.

This payment is shown in Entry No. 23. As it was not a debt of the decedent, existing at the time of the demise, it would be improper to charge its payment to Debts of Decedent. The payment, or so much of it as is properly due to the state, is an advance on the distribution of the assets. Since, however, in our present case there are three equal heirs on whom the inheritance tax will rest equally, there are no complications and the payment of the tax may be charged directly to Distribution of Cash. When the correct amount is determined and the state refunds the difference the entry will be (No. 34):

Cash	$.....	
Distribution of Cash.....		$.....

In any less simple case than this an Inheritance Tax Suspense account should be opened and the procedure outlined in § 624 should be followed, but the plan above suggested will serve in most administratorships.

§ 605. Payment of Federal Transfer Tax

The federal transfer tax is entered as an administration expense, but since administration expenses are deductible in determining the amount of the federal tax, and the tax itself is not so deductible, it must be borne in mind that, while the tax is entered in that account, it is not subject to the same interpretation as the other entries.

There is one exception to the rule that the tax is considered an expense against corpus of the estate as a whole. If there

are life insurance policies in excess of $40,000, there is charged to the beneficiaries under these policies that proportion of the total tax which "the proceeds, in excess of $40,000, of such policies bear to the net estate."[8] In this case the entry would be:

Administration Expense (for the amount to be borne by the estate)	$.....	
Distribution of Assets (for the amount to be passed to the beneficiaries)	.....	
Cash		$.....

§ 606. Loss by Theft

If the proceeds of the interest collection shown in Entry No. 25, together with his own funds, had been placed in the administrator's safe until they could be deposited in the bank, and had been stolen therefrom, it would be necessary for the administrator to make an entry:

Loss on Income	$.....	
Cash		$.....

The loss would be charged against income because the money stolen belonged to income and the loss should not fall upon the general assets of the estate. It would be improper for the administrator to allow the books to ignore both the receipt and the theft, because he is chargeable *prima facie* with all the amounts he collects and these must appear on his books.

The distinction between Loss on Income and Expense, Income, is that the former account is used for amounts for the distribution of which the representative receives no commission (see § 196), while Expense, Income, is charged with items for the payment of which he is entitled to his commission.

If the money stolen had been the net balance of miscellaneous receipts and disbursements, some of each against cor-

[8] Revenue Act of 1918, § 408. See also § 327 of this book.

pus and some against income, it would have been necessary to add the total receipts from corpus and subtract the total disbursements from corpus, and to add the total receipts from income and subtract the total disbursements against income, thus ascertaining the amount of the theft from corpus and income separately. The entry in this case would have been:

Loss on Income	$.....	
Loss on Realization	.....	
Cash		$.....

Loss on Income would be charged with the amount of income cash stolen, and Loss on Realization with the amount of corpus cash.

A theft of inventoried articles not yet realized upon would be shown by the following entry, made whenever the recovery seemed improbable:

Loss on Realization	$.....	
Inventory		$.....

§ 607. Sale of Pledged Assets

The bonds of the Gypsum Valley Company, of the par value of $10,000 and appraised at $9,000, are now sold by the Second National Bank under authority from the administrator to make that sale and satisfy from the proceeds a $6,000 loan secured by these bonds. The bank sells the bonds for $9,500, $6,000 of which it retains, the remaining $3,500 being paid to the executor. The entry might then be:

Cash	$3,500.00	
Debts of Decedent	6,000.00	
Inventory		$9,000.00
Gain on Realization		500.00

In this instance the administrator would in most jurisdictions be entitled to a commission for the sale at $9,500 and for

paying the debt of $6,000. Since some courts depend a great deal on an analysis of the Cash account for determining the amount of the representative's commission, it is well to let the Cash account show the entire amount on which the commission should be paid. To do this one may make two entries, one for the sale of the stock and one for the payment of the note (Entries Nos. 26 and 27):

Cash	$9,500.00	
Inventory		$9,000.00
Gain on Realization		500.00
Debts of Decedent	6,000.00	
Cash		6,000.00

§ 608. Deferred Expenses

The decedent had paid the interest in advance on the above loan to July 7, 1920, and the amount of interest prepaid from the date of demise to its expiration should have been and was included in the inventory for inheritance tax purposes. This interest has now become an expense against income, to be entered (No. 28):

Expense, Income	$349.68	
Inventory		$349.68

All deferred or prepaid expenses included in the inventory must be so entered upon their expiration. If this note had been paid off before its due date, a refund of the unearned interest having been obtained, the entry would have been:

Cash (for the amount of the refund)	$.....	
Expense, Income (for the amount of prepayment expired)	.....	
Inventory		$.....

Rent prepaid by the decedent would in some states be handled similarly, but the statutes of other states provide that rent is not to be accrued.

Prepaid insurance is to be accrued as is interest, and charged off in the same way. Entry No. 32 shows the writing off of the proportion of a fire insurance premium unexpired at the time of the decedent's death:

Expense, Income	$.....	
Inventory		$.....

The administrator receives no commission on such items of expense deferred from before the decedent's death.

§ 609. Deferred Income

In the same way, if any interest had been prepaid to the decedent, the unearned portion of that interest would be a liability and as such a debt of the decedent, a deduction from corpus. The entry upon the books of the estate at the expiration of the period for which the interest was prepaid would be:

Debts of Decedent	$.....	
Income		$.....

The same rule would apply to other items of deferred income except, in some states, rent. (See § 608.) On such items the administrator would be entitled to no commission.

§ 610. Dividends Received

Examples of the manner of showing dividends received appear in Entries Nos. 1 and 29. The first payment is credited to Inventory because, having been declared before the decedent's death, it is a part of the corpus and should be included in the inventory. (See §§ 308, 309.) If it had not been inventoried the credit would have had to be to Assets Not in Inventory. If the incorrect amount had been included in the inventory it would have been necessary to take up the difference through Gain on Realization or Loss on Realization. The dividend shown in Entry No. 29 is credited entirely to Income because it was declared after the demise.

§ 611. Loss by Bank Failure

Suppose that the Montrose Trust Company, in which the decedent had a savings account of $3,000, plus $60 of interest credited on December 31, 1919, failed.[4] The final settlement of the insolvent bank's affairs being made with a loss of $612 to the estate, the estate books must now show this loss in the following manner (Entry No. 30):

Loss on Income	$ 12.00	
Loss on Realization	600.00	
Cash	2,448.00	
Savings Accounts		$3,060.00

The loss is proportioned between Loss on Income and Loss on Realization as indicated in connection with a loss by theft. (See § 606.)

§ 612. Loss by Fire

All losses are subject to the same general principles. The settlement of a loss by fire is indicated in Entry No. 31, the appraised value of the property destroyed being $5,650. There was in effect a fire insurance policy for $3,000. The loss is entered at the time of the receipt of the payment from the insurance company:

Cash	$3,000.00	
Loss on Realization	2,650.00	
Inventory		$5,650.00

§ 613. Assets Erroneously Included in Inventory

It has been shown (see § 277) that assets which stand in the name of the decedent should be included in the inventory, leaving it to the court to pass finally upon the title thereto. Suppose that in the inventory there were included certain certificates of stock found in the decedent's desk, and assigned

[4] For comment on administrator's liability, see § 96.

in blank by him, which were claimed by another person who was able to prove that he had bought and paid for them. The court would order the administrator to turn over the certificates to the purchaser, and make on his books the following entry covering the transfer:

Loss on Realization	$.....	
Inventory		$.....

§ 614. Realization of Debts Receivable

Collections of debts due the decedent are credited to Inventory for the amount at which they have been appraised. If a payment is received on account, Inventory will be credited with only the amount received, the balance being held in abeyance. If more than the appraised value of the debt is received, the excess will be handled through Gain on Realization:

Cash (the amount received)	$.....	
Inventory (the appraised value)		$.....
Gain on Realization (the excess over the appraised value)		.....

If less than the appraised value is received and the administrator is in doubt as to the collectibility of the balance, that part may be left in the inventory with the other assets not realized upon, the entry being

Cash	$.....	
Inventory		$.....

for the amount which is received.

If the administrator has to compromise any account to secure settlement (making certain first that his action is tenable), the entry would be:

Cash (for the amount collected)	$.....	
Loss on Realization (for the amount relinquished)	.....	
Inventory (for the appraised value)		$.....

§ 615. Real Estate Passing Directly

If among the estate assets there is real property which passes directly to heirs-at-law, without coming into the hands of the administrator, this real estate not having been included in the inventory, the books of account need take no note of the transaction. But if such real estate was included in the inventory, it is necessary to credit it out of the Inventory account. The entry should be:

Distribution of Assets Other Than Cash.....	$.....	
Inventory		$.....

§ 616. Collection of a Mortgage Note

If the decedent had contracted to sell certain real estate, whether title had passed to the vendee, who had given the decedent a note secured by a mortgage for the unpaid balance, or whether title still vested in the decedent at the date of his death, the heir to the real estate receives no interest whatever in the decedent's equity in this property. The asset is considered personal property. The inventory should have shown the amount of money receivable and not any equity in the real estate. The entry for the collection of a mortgage note receivable is, therefore:

Cash	$.....	
Inventory		$.....

§ 617. Operation and Sale of a Going Business

If the decedent was the individual proprietor of a going business, complications are introduced for the handling of which no uniform rule can be laid down. Of course the assets of the business must be inventoried with the general assets of the estate, but it is always wise to make of them a distinct class in the inventory. If the court instructs the administrator to continue the operation of the business and a good set of books has been kept for this enterprise, these books should

be closed in the manner which has been followed in the past, bringing down the asset and liability balances, and entering the appraisal as an adjustment to net worth.

At this point the administrator has a choice of two courses: he may elect to continue the keeping of the books of the business as distinct from the general estate books, or he may carry the whole through one set of books. If the business is of some magnitude and has an accounting staff which is able and used to handling the transactions which occur, the former procedure is probably the more satisfactory, as there will be innumerable details which the administrator will not want to deal with and indeed probably could not handle so well as could those to whom the handling of these details has become a routine matter.

If the administrator follows this course he must, of course, provide a suitable check upon the work of those who handle the records. It will usually be necessary for him to tighten up on the methods generally followed in accounting for individual proprietorships. He should require that all receipts be banked, no bills being paid directly out of the receipts. If small payments are necessary they should be made from an "imprest" petty cash fund and properly vouchered.

While for the books of the business any good commercial system of accounting will do, complications arise in connecting these up with the books of the estate. Perhaps the most satisfactory tie is secured by opening on the estate books an account with the business. This would be done by making the entry

Business	$.....	
Inventory		$.....

for the appraised value of the assets of the business. All cash withdrawn from the business would be entered:

Cash	$.....	
Business		$.....

The payment of debts of the business existing at the decedent's death would be entered as

Debts of Decedent	$.....	
Cash		$.....

and the expenses of operating the business after the demise would be entered:

Business	$.....	
Cash		$.....

Whenever it is desired to make an accounting it will be necessary to reinventory the assets of the business. If possible all the bills incurred for the business should be paid and an entry then made to bring the balance in the account with the business to the amount of the new inventory. If the account with Business showed a debit of $22,000 and a credit of $6,000, the new inventory of the business being $14,000, the entry would be determined as follows:

$22,000.00, debit balance
— 6,000.00, credit balance

$16,000.00, net debit balance
— 14,000.00, true value

$ 2,000.00, loss

and the entry would be

Loss on Realization	$2,000.00	
Business		$2,000.00

This entry would bring the net debit balance of Business account down to the true inventory of $14,000 and would show the loss from operation.

If on the other hand the new inventory showed $18,000, the entry would be determined as follows:

	$22,000.00,	debit balance
	— 6,000.00,	credit balance
	$16,000.00,	net debit balance
from	18,000.00,	true value
	$ 2,000.00,	gain

The entry would be:

Business	$2,000.00	
Gain on Realization		$2,000.00

If the business had yielded a large amount of cash the books might show:

$40,000.00,	credit balance
— 16,000.00,	debit balance
$24,000.00,	net credit balance

To this we should have to add the new inventory to obtain the amount of gain.

If the books of the business are closed at the same time and on the same basis, a like amount of loss or gain should appear therein and be analyzed in the detailed operating statement of the business.

§ 618. Accounting for Partnership Interests

A partnership is dissolved by law upon the death of a partner, the assets of the partnership passing to the surviving partner or partners, subject to an obligation to dispose of them in winding up the business and to account to the estate of the deceased partner for his share in the partnership property, including the good-will. The administrator is charged with the duty of seeing that the partnership property is wound up and that the surviving partner or partners render to him a proper accounting, but it is unnecessary for him to record in his books

anything having to do with the realization except what he receives as the decedent's share. He has no authority to interfere with the surviving partner or partners in the liquidation of the partnership business although he has a right to compel the use of proper and fair means in such liquidation.

The interest of the deceased in the partnership venture is of course an asset belonging to the corpus of the estate. It should be appraised with the other assets, in which case any amounts the administrator receives as representing the realization of the decedent's share should be credited to Inventory up to the appraised value of the decedent's interest and after that to Gain on Realization, as the entire amount received is considered a part of the corpus although it may consist in part of profits earned by the surviving partners in the process of liquidating the business. If the amount finally realized is less than the inventory value the difference should be closed out by the entry:

Loss on Realization	$.....	
Inventory		$.....

The law of many states permits the inventorying of a partnership interest as of unascertained value. If this is done all that is realized from the interest is credited to Gain on Realization.

Review Questions

1. What is the object of this chapter?
2. What caution is necessary in making entries before appraisal?
3. What classes of expenses can properly be charged to administration?
4. How and when should the decedent's bank balance be entered? What difference may be made for savings accounts?
5. If advances are made to heirs or legatees, how are they entered? If an heir takes over specific assets, how should this transaction appear on the records?

6. How are funeral expenses entered?
7. How is payment of an outstanding check entered?
8. How is the inventory entered? How would an erroneous entry in the inventory be corrected later on the books?
9. Distinguish between entries for taxes on personal property assessed prior to death and after death.
10. How are taxes on real property entered?
11. How should accrued interest be treated?
12. How is payment of a debt entered?
13. When should interest payable be entered as a debt and when as an expense? Why is all interest accrued after death charged to income?
14. Distinguish between the entries for the payment of income taxes due at death and after-accruing income taxes.
15. What is the entry for an after-discovered asset if sold? If not sold?
16. How should gain or loss on realization be recorded?
17. To what are state inheritance taxes to be charged?
18. To what are federal transfer taxes charged? If part of this tax is levied on "life insurance policies in excess of $40,000," how would it be charged?
19. How would a loss by theft be entered? Why?
20. If pledged assets were sold, how would the transaction be entered? What advantage is there in making two entries of such a transaction?
21. Where expenses have been paid in advance and are carried as assets in the inventory, how should the matter be entered on expiration?
22. If the decedent had received interest in advance, how is that treated?
23. Distinguish between the entry of a dividend declared before death and one declared after death.
24. How would a loss by bank failure be apportioned between income and corpus?
25. How would a loss by fire be entered?
26. What would be the entry for assets erroneously included in the inventory?
27. When debts are paid the estate, what is the entry? If the debt was compromised, how would the transaction be entered? How may the partnership interest be inventoried?

28. If real estate has been entered in the inventory and then passed to the heir or legatee direct, what entry should be made?
29. Why should assets of a going individual business be made a distinct class in the inventory? What two plans are there to keep the records? What precautions should the representative take when separate books are kept for the business? How would these separate records be tied up with the representative's records? How would losses appear? How would gains appear?
30. In case of a partnership business, what should appear on the representative's books? How is any difference between the appraised value and the realization value shown?
31. What is the entry when a mortgage note receivable is paid?

CHAPTER LXX

EXECUTORSHIP ACCOUNTING

§ 619. Executor's Accounts Similar to Those of Administrator

Accounting by an executor differs from that by an administrator only to the extent that the recording of the slightly more complex duties of the executor requires more kinds of entries. The fundamental principles are the same for both; the same scheme of accounts is used, and the general form of the final accounting is the same.

Such differences as do exist result from the fact that the executor is operating under a will which probably sets aside specific legacies and may provide for the creation of trusts, whereas the administrator merely realizes and distributes. The final report of the administrator accounts for the distribution of cash, of assets other than cash, and of income. The executor, on the other hand, must account separately for the specific legacies and the general and demonstrative legacies distributed. He accounts in the same way as the administrator for the distribution of income, but if a trusteeship is created he must account for the payments of income cash and corpus cash to the trustee, even if he himself is to perform both functions.

§ 620. Additional Accounts Needed by Executor

To record this additional information, certain accounts are used by executors in place of the Distribution of Cash account, Distribution of Assets Other Than Cash account, and Distribution of Income account of the administrator. These with their uses are presented in the following synopsis:

Debited With	SPECIFIC LEGACIES DISTRIBUTED	*Credited With*
Appraisal values of specific legacies distributed.		

PAYMENTS ON GENERAL AND DEMONSTRATIVE LEGACIES

All payments of corpus cash and the inventory value of all assets turned over on account of general and demonstrative legacies.	

PAYMENTS OF PRINCIPAL TO TRUSTEE

All payments of cash and the inventory value of all assets turned over out of corpus to trustee.	

DISTRIBUTION OF INCOME

All payments of income cash directly to legatees.	

PAYMENTS OF INCOME TO TRUSTEE

Amounts paid by executor to trustee on account of income.	

The general scheme of accounts differs from that of the administrator only in that payments to legatees on other than specific legacies are charged to Payments on General and Demonstrative Legacies. Payments or deliveries of specific legacies, on which the executor is entitled to no commission, are charged to Specific Legacies Distributed, while payments or deliveries of assets to the trustee are debited to Payments of Principal to Trustee if they will become part of the prin-

cipal of the trust, or to Payments of Income to Trustee if they are from income.

In closing the books of the executor when an accounting is to be made, the first three of the above accounts are credited with amounts sufficient to balance them, the corresponding debit being to Estate Corpus, and the last two are credited with the amounts necessary to balance them, Income account being debited.

§ 621. General Books Kept by Executors

As with administrators, any form of double-entry records in which the information required may be recorded will be adequate. The separate ledger, cash book, and journal are preferred to the synoptic, which is not so well suited to the accounts of executors because of the number of columns which would be required for the greater number of accounts. A cash journal can be used with great advantage by executors.

§ 622. Payments on Legacies

If the executor is willing to pay to the legatees reasonable advances on their legacies, the estate funds being sufficient and there being no doubt of the estate's solvency, the payments are entered:

Payments on General and Demonstrative Legacies	$.....	
Cash		$.....

The law in reference to paying legacies has been set out in Chapter XVII. Like the administrator, the executor must deduct the state inheritance taxes and pay over only the difference when the legacies are of cash, or collect the tax on the legacy when the legacy is of things other than cash.

Specific legacies are handled differently from others because the executor is not entitled to his commission on them.

The entry for the transfer of a legacy of assets other than cash is:

Specific Legacies Distributed	$.....	
Inventory		$.....

Specific legacies distributed are entered in the fifth column of the Realization account.

If an after-discovered asset (see § 586) constitutes part of a specific legacy, as a block of Liberty bonds when "all my Liberty Loan bonds" had been bequeathed to a nephew, the executor should appraise it properly (see § 301) and make the entry

Specific Legacies Distributed.....	$.....	
Assets Not in Inventory.....		$.....

for the fair market value of the asset at the time of turning it over.

§ 623. Legatees Ledger

When the legacies not specific are numerous or advances made thereon are likely to be many, it is often advisable to keep a legatees ledger in the general style of any subsidiary personal accounts ledger such as an accounts payable (purchase), or accounts receivable (sales or customers) ledger.

All payments made on other than specific legacies and charged to Payments on General and Demonstrative Legacies account should be posted to the legatees' account in this ledger. The total debits in this ledger will, then, always equal the debit amount of the Payments on General and Demonstrative Legacies account, and this ledger will be subsidiary to that account. The legatees are not credited until the books are closed (see § 629), when Payments on General and Demonstrative Legacies account is credited with the payments made. Even then, if certain legacies or parts of legacies of this type have not

been paid, the full amount of the legacy will not be credited to the legatees' account. The credit will be the amounts of the payments only. For this reason the titles of the accounts in the legatees ledger should embrace memoranda of the amounts of the legacies.

§ 624. Inheritance and Transfer Taxes

State inheritance taxes are an advance on legacies, whether or not they are to be collected from the individual legatees, because if not so collected they are a deduction from the legacy to the remainderman. Whether such taxes should be charged to Payments on General and Demonstrative Legacies, Payments of Principal to Trustee, or to Specific Legacies Distributed cannot, however, be told at the time of the initial estimated payment, as this cannot be divided among the legatees. Therefore this payment is best debited to Inheritance Tax Suspense until the true amount is ascertained.

When the correct amount of tax has been determined and the state has refunded the difference, if any, the refund will appear as:

Cash	$.....	
Inheritance Tax Suspense.....		$.....

But if the determination of the exact tax shows that more is due than has been paid, the entry of the payment will be made as was that recording the first payment.

When the exact tax has been determined, it is possible to divide the tax and charge it against the proper accounts, viz.:

(1) Payments on General and Demonstrative Legacies	$.....	
Inheritance Tax Suspense.....		$.....
For the amounts which the executor will take as deductions from all except specific legacies.		

(2) Payments of Principal to Trustee.....	$.....	
Inheritance Tax Suspense.....		$.....
For the amount of tax on the estimated residue which will be given to the trustee, if any.		

The balance remaining in Inheritance Tax Suspense account is the amount due the executor from the recipients of specific legacies. Such collections are entered as:

Cash	$.....	
Inheritance Tax Suspense.....		$.....

By these entries the Inheritance Tax Suspense account is cleared.

No part of the tax is chargeable to Payments of Income to Trustee because only property existing at the time of death is taxed.

The payment of the federal transfer tax will be handled as described in § 605.

§ 625. Payments of Income

If under the terms of the will no trusts are created, the only advantages of separating corpus from income are those general advantages mentioned in § 572, and income may be paid out exactly as by an administrator. But since, when a trust is created, the legatee thereof is not the life tenant or the remainderman, but the trustee himself, the only payments on such a legacy which the executor can lawfully make are to the trustee, whether he or another is acting in that capacity. Therefore any case in which the executor pays to a life tenant an advance on income to become due him under the terms of the will is in reality a payment by the executor to himself as trustee, for which he need as executor take no receipt from the life tenant, because the latter has no status in the administration of the estate. As trustee, however, he should take

credit on his trusteeship books and in that capacity should be properly protected by a receipt from the life tenant. (See § 662.) The entry is:

Payments of Income to Trustee.....	$.....	
Cash		$.....

§ 626. Real Estate Passing Directly

If real estate which is to pass directly to devisees has been included in the inventory, the Inventory account must be cleared of the appraised value of this realty by the entry:

Specific Legacies Distributed.....	$.....	
Inventory		$.....

Review Questions

1. What more than is required of an administrator must an executor account for?
2. What additional accounts will be opened? With what is each of of these accounts debited? How is each of these accounts closed?
3. What books should an executor keep? Why is the synoptic not so well adapted to the use of executors?
4. When is a legatees ledger advisable? To what account is this ledger subsidiary? How is this ledger kept?
5. How are advances on legacies entered? How is a payment of a specific legacy entered?
6. How should payment of a state inheritance tax be entered? Against what accounts is it to be finally charged? When the amounts of tax due from specific legatees are collected, how are they entered?
7. When a trust is created, how should payments of income to a life tenant be charged?
8. What is the entry for a specific devise of realty?

CHAPTER LXXI

CLOSING THE BOOKS AND PREPARING THE ACCOUNT

§ 627. Preparing to Close the Books

When the representative has realized, in so far as he can, on all the assets of the estate, and has paid all just claims against the estate, he is ready to wind up his transactions before closing his books and rendering his final accounting. He must first gather together and pay all the current bills against him, as those for stationery, accountants' services, attorneys' fees, etc. These transactions involve no principles which have not been discussed, and in order not to overburden the text they are omitted from the set of accounts presented. He must also reduce to the present value any deferred expenses still included in his Inventory account. If insurance, for example, had been prepaid by the decedent for several years and had been included in the inventory, the representative must now make the entry

Expense, Income	$.....	
Inventory		$.....

for the amount of the prepayment which has expired since the demise. In other words, he must reduce the book value of the asset to its present worth.

If he has discovered any assets not in the inventory, which he has not sold or distributed, he should now make the entry

Inventory	$.....	
Assets Not in Inventory.....		$.....

for their fair market value.[1]

[1] See §§ 301 and 586. For the handling of such an item on the realization account, see the last entry on Form 27.

The representative must also satisfy himself that he has settled all inheritance, income, and other tax claims fully, so that no later demands may be enforced against him personally.

§ 628. The Trial Balance

Before beginning to close the books it is wise to make sure that they are in balance. If they are out of balance some account is untrue, and it will be impossible properly to close them until the error is found and corrected. The manner of taking off the trial balance of fiduciary accounts is the same as that of a set of commercial accounts.

In reference to the synoptic we saw (see § 583) that since in every entry we have equal debits and credits, on each page we will have a total of debits equal to the total of the credits, and the sum of the page totals of all the debit columns must equal the sum of the page totals of all the credit columns. Before the totals are carried forward from one page to the next, this test of the entries made should be applied, and no totals forwarded until the page balances. In case readdition does not locate the error, it will be necessary to go over the entries and find out on which line the debits do not equal the credits, until all the needed changes are made and the books are in balance.

From this explanation it will be seen that, although the synoptic may be looked at as a cash journal, it is a complete ledger in itself, because each account shows the ledger balance of that account. Any page balance of the synoptic is a trial balance at that point, and when we are preparing to close the synoptic the final trial balance will be simply the page balance.

The trial balance used for purposes of illustrating the accounting is not that of the administrator's accounts shown in Form 26. It has been drawn from the work of the executor, because of the additional complications usually existing therein, but the same general treatment is followed in the work of an administrator.

TRIAL BALANCE

Account	Gross Debit	Gross Credit	Net Debit	Net Credit
Cash in Montrose State Bank	$53,314.65	$41,974.89	$11,339.76	
Inventory	152,564.85	70,723.36	81,841.49	
Assets Not in Inventory		1,475.23		$ 1,475.23
Gain on Realization		952.28		952.28
Loss on Realization	4,250.63		4,250.63	
Funeral and Administration Expenses	5,090.52		5,090.52	
Debts of Decedent	15,758.04		15,758.04	
General and Demonstrative Legacies Distributed.	6,000.00		6,000.00	
Specific Legacies Distributed	16,023.28		16,023.28	
Payment of Principal to Trustee.	7,239.05		7,239.05	
Estate Corpus		152,364.85		152,364.85
Income		10,132.69		10,132.69
Loss on Income...	750.00		750.00	
Expense, Income..	2,332.28		2,332.28	
Payments of Income to Trustee.	4,000.00		4,000.00	
Savings Accounts.	10,300.00		10,300.00	
Inheritance Tax Suspense	8,346.27	8,346.27		
Totals	$285,969.57	$285,969.57	$164,925.05	$164,925.05

§ 629. Balancing the Subsidiary Records

At this point it is necessary to balance the subsidiary records. The total of the General and Demonstrative Legacies Distributed account must equal the total of the payments charged to the legatees on the legatees ledger. (See § 623.)

This amount must also equal the sum of all the general and demonstrative legacies except those to the trustee, unless some legacies have not been paid, in which case the difference will be the amount of those which have not been paid. If these qualities do not appear there is an error in addition or there has been a failure to enter the same figure to the legatees ledger as was entered in the original record.

The net debit to the Inventory account (the difference between the total debits and the total credits) must equal the appraised value of all the assets which are still unrealized upon,[2] as shown in the Realization account, and the Realization account must itself balance. (See § 585.) If this test fails and the error is not one of addition it is due to a failure to credit Inventory account with the *appraised* value of some asset which has been disposed of.

§ 630. Reconciling the Bank Account

Ordinarily the balance on deposit according to the statement furnished by the bank or the balance brought down in the pass-book will be greater than the balance shown in the depositor's books of account by the amount of the checks issued but not yet presented at the bank for payment. If this is not true, the error is due to:

1. Failure on the part of either the bank or the depositor to enter correctly the amount of some deposit or check.
2. Failure on the part of the depositor to deposit some receipt.
3. Failure on the part of the depositor to enter in his books some charge (for collection, interest, etc.) made by the bank against his account.
4. An error in addition or subtraction on the part of the bank. If the depositor's own general books are in

[2] Including any after-discovered assets not sold or distributed. See §§ 586, 627.

balance the error could not have been one of addition or subtraction made by him unless he has made a compensating error, i.e., an equal error in the other direction.

All the above reconciliations must appear before the account can be properly prepared. If there is an error it must be found and corrected.

§ 631. Preparing the Closing Entries

The closing entries can best be made in connection with the preparation of the various schedules of the final accounting. When we outlined our system of accounting for estates (see § 570), we planned to have an account for each group which would have to be handled separately in the accounting for the court. Form 28 shows the final accounting of the estate whose before-closing trial balance is shown in § 628 above. An examination of this form will show us that the groups are as follows:

Inventory.
Realization of Assets Not in Inventory.
Gain on Realization of Appraised Value.
Loss on Realization of Appraised Value.
Specific Legacies Distributed.
Items in Inventory Undistributed.
Funeral and Administration Expenses Paid.
Debts of Decedent Paid.
Payments Made on General and Demonstrative Legacies.
Payments of Principal to Trustee.
Cash on Hand.
Income Received.
Expense Against Income.
Loss on Income.
Payments of Income to Trustee.

These are the accounts whose uses we have been examining. The summary, schedules, and closing entries may now be prepared together, in the manner described in the following sections.

§ 632. Debits on Account of Corpus

As the executor must distinguish his receipts and disbursements between corpus and income, the summary is divided into two parts, one for corpus and another for income. The first of these is for corpus. In starting this, the six-column schedule (see § 585 and Form 27), on which we have been keeping a record of the realization of our inventory, may be put to excellent use. The total of the first column, down to the end of the appraisal as filed, is the amount of that appraisal, and is entered as the first item in the summary. (See Form 28, "Account of Proceedings.")

The after-discovered assets sold and on hand are shown in the remainder of the first column, the total of which becomes the second item in the summary. When this amount is recorded, the Assets Not in Inventory account, which will show the same total, may be closed out by the first of the closing entries:

Assets Not in Inventory	$1,475.23	
Estate Corpus		$1,475.23

The fourth column of the Realization account represents the other debit to the executor, and when its total is entered as the gain on realization of appraised value, the Gain on Realization account is closed out:

Gain on Realization	$952.28	
Estate Corpus		$952.28

The total charges to the executor on account of corpus are then the sum of the credits in the Estate Corpus account.

§ 633. Credits from the Realization Account

Three of the credits in our summary of the corpus are also taken from the Realization account. From the third column we obtain the amount of loss on realization of appraised value, and having entered it we may close the Loss on Realization account by the entry:

Estate Corpus	$4,250.63	
Loss on Realization		$4,250.63

The next item in the summary is the appraised value of the specific legacies which have been distributed. Its amount is shown by the fifth column of the Realization account and by the Specific Legacies Distributed account on the synoptic or general ledger. When this total has been entered on the summary the ledger account may be closed by the entry:

Estate Corpus	$16,023.28	
Specific Legacies Distributed		$16,023.28

The summary next shows the undisposed-of balance of the inventory, including any after-discovered assets not sold. This figure is the total of the sixth column of the Realization account and is the balance in the Inventory account on the synoptic. The Inventory account, which is a balance sheet item, is not closed out.

§ 634. Schedule A—Realization of Assets

To prepare Schedule A, simply have a copy of the Realization account made with the proper heading, Schedule A, Realization of Assets. This should be prepared on a sheet so arranged that there is a space to the right of the figures sufficiently wide to enter the various explanations called for, such as manner of sale, reasons why various assets have not been sold and debts not collected, and details as to loss by accident, such as theft and fire, etc.

By keeping the Realization account during the progress of administration we have avoided at the time of winding up the estate the tedious work of digging out the information needed for the schedules, and have so arranged our work that the most important of our schedules is prepared for us in the very keeping of our books. In fact, it may be said that the first five of our schedules are prepared for us by our method of keeping our accounts, for under the plans suggested by earlier writers separate schedules are required for each of the five items combined in our Schedule A.

§ 635. Other Corpus Credits

The other corpus items for which the executor takes credit in the account are shown in the schedules listed below (see Form 28):

Schedule B, Funeral and Administration Expenses.
Schedule C, Debts of Decedent.
Schedule D, Payments on Legacies.
Schedule E, Payments of Principal to Trustee.

These schedules are easily prepared from the entries on the synoptic or general ledger, being, in fact, merely copies of the accounts with the necessary explanatory matter. The form in which they are written is largely a matter of personal preference.

These accounts should then be closed on the books by the following entries:

Estate Corpus	$5,090.52	
Funeral and Administration Expenses...		$5,090.52
Estate Corpus	15,758.04	
Debts of Decedent.....		15,758.04
Estate Corpus	6,000.00	
General and Demonstrative Legacies.....		6,000.00

Estate Corpus	$7,239.05	
Payment of Principal to Trustee		$7,239.05

For the closing, four journal entries are preferred to a compound entry because the result of the separate entries is that the Estate Corpus account now contains the summary of the executor's account in so far as corpus is concerned. The credit balance in the Corpus account after these entries have been made is the value of the inventory and corpus cash on hand.

In closing the summary as to corpus the reader will notice that the total of the credits is carried over and deducted from the total of the debits. The difference is the amount of corpus cash.[8] The balance remaining in the inventory per the books and Schedule A (sixth column) is then entered on the summary again and added to the amount of corpus cash, for the reason that since the executor has taken credit by Schedule A for the inventory unsold, he must now charge himself with it because it constitutes part of the estate assets remaining on hand, from the responsibility for which he has not been released.

§ 636. The Income Summary

The debit against the executor on account of income is the amount of the credit to Income account. The items making up this amount are copied with the necessary explanations in Schedule G.

The credits which the executor takes are listed in:

Schedule H, Expense Against Income.
Schedule I, Loss on Income.
Schedule J, Payments of Income to Trustee.

These schedules are virtually transcripts of those ac-

[8] This figure cannot be obtained from the books at this time.

counts, which on the books are then closed by the following entries:

Income	$2,332.28	
Expense, Income		$2,332.28
Income	750.00	
Loss on Income		750.00
Income	4,000.00	
Payments of Income to Trustee		4,000.00

The Income account on the books will then show the amount of cash belonging to income in the hands of the executor, which amount should also be the difference between the income with which the executor has charged himself on the summary and the charges against income with which he has credited himself.

§ 637. Reconciliations

The closing entries have now been made on the books and the balances are brought down. It is well at this point to make certain that the necessary reconciliations, most of which have been spoken of above, exist:

1. The two amounts of cash shown on the summary, i.e., cash on hand belonging to corpus and cash on hand belonging to income, must equal the total of the balances in the various cash accounts on the books.

2. The amount of the Estate Corpus account on the books is the amount which the summary shows to be still charged to the executor on account of corpus.

3. The amount of the Income account on the books is the amount which the summary shows to be still charged to the executor on account of income.

4. The sum of the balances in the Estate Corpus and Income accounts on the books equals the sum of the balances in the Inventory and the various cash accounts, and equals the

total amount with which the executor remains charged by the summary on account of both corpus and income.

§ 638. Decree of Distribution

The executor is now ready to present his accounting to the court and have official approval of his stewardship given in the form of a decree of distribution. Of course in states which prescribe by statute the arrangement or the form in which the schedules are to be prepared, the law will have to be followed, but the general principles set out above will apply.

The sections which follow show the entries needed to record the transactions resulting from the decree of distribution.

§ 639. Expenses of Accounting

An allowance to the executor for the expense of rendering his account is made by the court at the time of the accounting and consequently the amount cannot be included in the account itself as a disbursement already made by the executor. The law usually fixes certain amounts to be allowed and the court has some discretion in making further allowances.

Before the closing of the books this would have been an administration expense, but since there are so few entries to be made at this stage, the nominal accounts are not reopened. This payment is accordingly debited directly to Estate Corpus, since it is a deduction from the corpus. The entry is:

Estate Corpus	$.....	
Cash		$.....

§ 640. Executor's Commission

The law governing the allowance of commissions has been discussed in § 196. At the time of rendering the decree of distribution the court awards the representative his commission. The commission thus allowed must be prorated between corpus

and income in the ratios that the amounts on which the receiving and distributing commissions on account of principal and income are computed bear to the total of both, but in the computing of commissions, corpus and income must be considered together, because in states in which the commission is payable on a sliding scale, the first amounts being at higher rates, the computation of the commissions would otherwise be excessive.

For the same reason that we did not reopen any corpus expense accounts we do not reopen the Expense, Income account, and the entry is made as a debit direct to Corpus and to Income:

Estate Corpus	$.....	
Income	.....	
Cash		$.....

§ 641. Interest on Legacies

The interest on legacies which was allowed by the decree of distribution is a proper charge against income because the income has been increased by the executor's retention of cash which should have been paid to the legatees at the expiration of one year from the issuance of letters testamentary, the date upon which the executor may begin to pay legacies. The entry is, then:

Income	$.....	
Cash		$.....

§ 642. Final Distribution as Executor

After allowing the above items the decree of distribution awards the balance of the corpus and income to the trustee. The assets other than cash form a part of the residue of the estate and become principal of the trust because they were in existence at the time of death. The inactive bank accounts may include accretions of income from interest accrued after

the date of death, but it is not necessary to divide the inactive bank accounts by paying to income out of them such part as represents interest and paying the balance to principal, unless there are insufficient funds in the general account to meet the amount remaining in the Income account.

The final entry showing the transfer of the remainder of the assets of the estate to the trustee is made as follows, the amounts being the balances in each account:

Income	$.....	
Estate Corpus	.....	
Cash		$.....
Inventory		.....

There is now no balance in any account and the books should be ruled off as finally closed. The executor should present to the court vouchers showing that he has made the final distribution directed by the court and should have his executor's bond canceled. If he has been named trustee also, he assumes his duties in that capacity, entering into entirely new relations with the court and the beneficiaries under the trust. As trustee he should open a new set of books.

Review Questions

1. What must be done preliminary to closing the books? How are any deferred expenses reduced to their present value?
2. How is the synoptic kept in balance?
3. What subsidiary records must be balanced?
4. How is the bank account reconciled?
5. How are the closing entries best prepared?
6. How are the debits for corpus obtained?
7. How are the credits for corpus obtained? Why is the Inventory account not closed?
8. How does the realization account facilitate the preparation of the schedules?

9. What are the other corpus items for which the executor is to be credited? How are the accounts showing these credits to be closed?
10. What items make up the debit against the executor on account of income? Where are the credits obtained?
11. What reconciliations should be made?
12. If the accounting of the executor is approved by the court, what follows?
13. To what is the allowance for expense of accounting charged? What is the entry?
14. How is the executor's commission computed? How is it prorated between corpus and income?
15. When is interest allowed on legacies? Against what is it charged?
16. What is done with the balance of corpus and income in this case? What are the closing entries? What should the executor do to terminate his office?

CHAPTER LXXII

PRINCIPLES OF TRUSTEESHIP ACCOUNTING

§ 643. Preliminary Matters

The first duty of a testamentary trustee on taking over the assets of an estate is to examine the accounts of the executor sufficiently to satisfy himself that he is receiving all of the assets to which he is entitled. Immediately thereafter he should have transferred to his name as trustee all registered bonds, notes, and certificates of stock. The new issues or changed record should be in the name of "..... ....., Trustee for Estate of....." or "Estate of....., ... Trustee." If there are two or more trustees the transfers should be to the names of all.

The trustee should see that adequate insurance is carried and should make certain that all taxes assessed against the estate assets have been paid so that the carelessness of someone else may not reflect on him.

It is necessary for him to study the investments of the estate, ascertaining that they are all proper investments for a trustee. It devolves upon him to be certain: first, that the investments are secure, so that the principal of the trust may be preserved safely for the remainderman, and secondly, that they are productive, so that they will yield the current rate of interest to the tenant.

If there is an unnecessary amount of uninvested cash the trustee should invest it as soon as possible. He will be liable for interest on uninvested funds for any period during which he was not functioning as fully as he should have been.

§ 644. Trustee's Duties Less Involved Than Executor's

The duties of the trustee are less varied than those of the executor. The functions of the executor include the realization of the cash value of the assets and the payment of debts owed by the decedent as well as the care of the assets and the distribution of the legacies, but the trustee's duties are in general only the care of assets and the division of income. They have already been discussed in detail. (See § 411.) Briefly they include the:

> . . . power to demand, receive, and sue for the trust property, for any income accruing on it, to invest the funds and lease the real estate; to take proper measures to keep the real estate repaired and insured, to defend suits against him in respect to the property, or against him as trustee; to disburse and distribute the property.[1]

The general principles laid down for the accounting of administrators and executors must be followed by trustees, and this chapter will not repeat what has been said in earlier chapters, but will simply call attention to the differences resulting from the fewer complications in the activities of trustees.

§ 645. Principal and Income of Trusts

The trustee takes over the corpus of the estate from the executor. During trusteeship this corpus is called the "principal." The same general principles apply to the division of trust funds between principal and income as have been set out in connection with the work of the administrator and executor. (See Chapter XXXV.) The problems of classification are not nearly so frequent or so difficult in the case of the trustee.

§ 646. Sale of Capital Assets

Perhaps the most confusing of the questions which arise is that having to do with profit or loss on the sale of capital

[1] Loring, A Trustee's Hand Book (3rd ed.).

assets. In administratorship and executorship accounting we called these items "gain on realization" and "loss on realization." Realization is not one of the functions of the trustee, who is supposed to receive the estate from the executor fully realized except for such investments as are permitted to trustees.

It will, however, at times be necessary for the trustee to sell certain of the estate assets because they have ceased to be secure investments, because they no longer yield an adequate return, or for some other reason. These sales will seldom be made for the valuation at which the assets were carried in the inventory of the estate in case they were turned over to the trustee by the executor, or for exactly their cost to the trustee if he purchased them. Gains and losses of this type are not income or a charge against income.[2]

The theory (see § 312) is that in the case of inventoried assets it is not a certain amount of money which makes up the principal but the assets themselves for whatever they are worth, and that in the case of assets purchased by the trustee and later resold by him, the increment or loss is an increase or decrease in the principal of the trust rather than an item of income or a reduction of income resulting from the normal course of investment. The general rule is that any unusual or extraneous gain or loss, other than the usual yearly income and charges against that income, falls to the principal of the fund.

§ 647. Betterments, Repairs, and Replacements

Expenditures for repairs which are necessary to maintain property in its previous condition are chargeable to income, but repairs and additions which increase the usefulness or the value of property are charged to principal. This rule is not

[2] In this connection it is well to remember that income from the standpoint of the division of funds between a tenant and a remainderman is not necessarily the same as income from the standpoint of the existing income tax law. (See also § 315.)

always easy to apply, but it has been interpreted as meaning that "where repairs improve the property to the extent of their cost, they are chargeable to principal and are a judicious investment of the trust funds." [8] In other words, any cost which actually adds to value—which is for a real improvement or addition rather than for merely a repair or a replacement—is a proper charge against the principal.

§ 648. Paying Off Encumbrances

Just as the trustee does not have the duty of realizing on the estate assets but will, under certain circumstances, sell some of these assets, so there are exceptions to the rule that he does not ordinarily have the duty of paying debts of the decedent, which is one of the principal functions of the executor. Some of the property turned over to the trustee may have been pledged or mortgaged and it may eventually devolve upon the trustee to discharge this debt. Such a payment is a charge against the principal, but all interest on the mortgage is chargeable to income.

If the trustee is required to discharge an involuntary encumbrance, such as an assessment for street improvements, the cost is divided between income and principal. Sometimes the entire amount is charged to principal at the time of payment and income is charged with interest thereon annually thereafter. Sometimes the interest is funded and charged to income in a lump. If the tenant and remainderman are beneficiaries of the same fund the principal is paid out of the corpus, the life tenant losing the interest and the remainderman the principal. (See also § 314.)

§ 649. Expenses

Taxes are chargeable against income with the exception that in some states taxes assessed on vacant land are charged

[8] Loring, A Trustee's Hand Book (3rd ed.).

against the principal. Insurance premiums are generally chargeable against income by the terms of the trust instrument, and this practice is usually followed where there are no definite provisions. But recoveries on account of fire losses are principal. In the case of a partial loss they are generally used in meeting the expense of repairs. If there is a total loss, the fund is invested either in rebuilding or in some other proper manner.

The trustee's commission is usually a percentage of the gross income collected and is charged against income. Additional allowances where extra work is necessary, as for example in the sale of real estate, are charged to the principal when such services are primarily beneficial to the fund, or they may be apportioned equitably. A broker's commission in the purchase or sale of real estate is considered part of the purchase price or a deduction from the sale price, and is consequently a charge against principal.

> The same reasoning would seem to apply to the purchase of stocks and bonds, [but] broker's commissions on change of investments, where it was expressly provided that all expenses were to be charged to income, were properly classed as expenses and charged to income.[4]

Entries Nos. 5, 6 and 7 on Form 29 show the entering of commissions as a reduction of the selling price and as an addition to the cost.

§ 650. Fewer Accounts Needed by Trustees

The accounts used by the executor were:

Cash
Inventory
Assets Not in Inventory
Gain on Realization

[4] Loring, A Trustee's Hand Book (3rd ed.).

Loss on Realization
Funeral and Administration Expenses
Debts of Decedent
Specific Legacies Distributed
General and Demonstrative Legacies Distributed
Payments of Principal to Trustee
Estate Corpus
Income
Loss on Income
Expense, Income
Payments of Income to Trustee

Of these we see at a glance that we may eliminate a number. We shall no longer need the accounts for the distribution of legacies and payments to the trustee. Any encumbrances which exist against the estate property and are paid off by the trustee will be so few in number that there will be no use in opening an account with Debts of Decedent for them. These payments may be charged directly to Principal.

In the same way, any gain or loss realized on sales of estate assets, instead of being first entered to Gain on Realization account or Loss on Realization account, may be entered directly to the credit (if a gain) or to the debit (if a loss) of Principal. Should it happen that any estate assets not included in the property administered come into the hands of the trustee, they also might be credited directly to Principal instead of being carried through Assets Not in Inventory.

Since the expenses against income will be comparatively few, it is not considered necessary to open a separate account for this purpose. Such expenses and items of loss on income are charged directly to the Income account; charges of the same nature which apply against the principal are charged directly to Principal.

When the books of the executor were closed the assets

were included in the two accounts of Cash and Inventory. (See § 642.) These were offset by the two net worth accounts of Income and Corpus, the amount of income cash being represented by the balance of the Income account and the sum of the corpus cash and other corpus assets by the balance of the Estate Corpus account. These four accounts are all of the executor's accounts which we have not eliminated as being unnecessary for the trustee. In other words, the accounts of the trustee are generally kept without the use of analytical income and expense accounts.

But in the accounts of trust companies as opposed to individual trustees, because of the great number of assets of each kind handled, the handling of the asset accounts is simplified if they are somewhat broken up. (See Chapter LXXV.) The ordinary subdivisions are Cash, Notes and Mortgages, Stock and Bonds, Real Estate, and other assets. The same subdivision is made in the trust ledgers. (See § 656, "Form of Records.")

§ 651. Must Account Separately for Each Trust

It is necessary for the trustee to account separately for each of the various trusts for which he acts. This does not mean for the various estates alone, as in one estate there may be several trusts. A will may provide for any number of the different kinds of trusts outlined in § 306. There may be a trust fund of a certain sum the income from which is to be paid to one or more persons for a period of years or until the happening of a certain contingency, such as the marriage or death of the tenant or some other person. It may be provided that at the expiration of the trust the principal shall be given to the tenant (except, of course, if the trust terminates with the death of the tenant), or to some other person, or that it shall be divided among several persons in a specified proportion, or revert to the general principal of the estate. Each

amount of money or other property set aside constitutes a separate trust.

§ 652. Supposititious Case

Let us suppose that the will of James C. Dawson creates the following trusts:

1. Income from $40,000 for a period of twenty years to be paid to the trustees of Butler University for certain uses set forth; principal at the end of that time to revert to the undivided estate.

2. Income from $100,000 to be paid to donor's sister, Mrs. Janet Dawson Reeves, donee, during her life; principal to be paid over to grantees as directed by her will.

3. Income from $100,000, said payments of income not to exceed $5,000 in any year, to be given to donor's sister-in-law, Mrs. Mary Allen Dawson, during her life, any excess in income above $5,000 in each year to become a part of the principal of the undivided estate; the principal of this trust fund to pass upon her death to her children by donor's brother *per stirpes.*

4. "I instruct my executors and trustees to pay to my cousin, Henry G. Dawson, annually during his natural life, but not for longer than twenty years, the sum of $2,400 from the income of my undivided estate, in such instalments as shall seem to them desirable." Strictly speaking, this provision does not create a trust because no definite amount is set aside to produce the specified annuity.

5. Income from balance of estate to be accumulated in trust for twenty years, trustee to disburse such sums as are necessary to maintain and educate donor's children during that time and at the end of that time the principal and income to be divided between them *per stirpes.*

The manner of handling the transactions for these five trusts will be discussed in the next chapter.

§ 653. Trustee's Reports to the Court

The statutes of practically all of the states require a testamentary trustee to file an inventory soon after his appointment. Further reports are required at intervals thereafter, most states requiring them annually. They must accomplish the same purpose as the accounting rendered by the administrator or executor. To this end they consist of a general statement of all transactions, fully supplemented by detailed schedules. These reports are discussed in detail in Chapter LXXIV.

The courts of the different states use various methods of satisfying themselves of the accuracy of the trustee's reports before they are allowed. Should they contain errors which are not discovered, or should they be latently obscure, the trustee will in all probability be the loser. The beneficiary is always given the benefit of the doubt.

§ 654. When Executor Is Also Trustee

Writers differ somewhat as to the advisability of keeping separate sets of books where one person is both executor and trustee. One of them prescribes a two-column cash book for the purpose of separating executor's cash from trustee's cash, but states that "it is useless trouble for the executor to keep a separate set of books for the trusteeship." The consensus of opinion is that because the utmost care should be exercised to preserve intact the trust funds and to keep distinct the trust transactions, and because usually the executorship is concluded before any substantial transactions on account of the trusteeship occur, it would seem advisable to open a separate set of books for the trusteeship, even though this course might necessitate the running of two sets of books during a small part of the time. There is, of course, no objection to carrying the trustee's accounts in another part of the same book with the executor's if the ruling will serve the purpose, nor to using the same loose-leaf binder when that system is employed.

Review Questions

1. What are the first matters to which a trustee should attend? What two things should he ascertain as to the investments?
2. How do a trustee's duties compare with those of an executor?
3. What is the estate in a trustee's hands termed?
4. How is gain or loss on a sale treated in a trustee's accounts? What is the distinction made between regular income and charges and extraneous gains and losses?
5. When should repairs be charged to income and when to principal?
6. To what should a payment of interest on a mortgage be charged? If this mortgage itself was paid, to what would it be charged? What would be the entries if an assessment for permanent street improvements were paid by the trustee?
7. How are taxes charged? Insurance? The trustee's commissions? A broker's commission? How are recoveries for fire losses credited?
8. Why are fewer accounts needed by trustees than by executors? Why are the entries simpler?
9. Why must there be a separate set of accounts for each trust?
10. Are all the trusts outlined in § 652 legal in your state?
11. What reports are required by a trustee in your state?
12. Why is it better for the trustee's accounts to be distinct from the executor's?

CHAPTER LXXIII

KEEPING THE TRUSTEES' ACCOUNTS

§ 655. No Need for Complicated System

The accounting needs of the trustee are, as has been shown, very simple. This being the case, there is no reason for anything other than the simplest of systems in keeping a record of his transactions. Trust companies generally have come to realize this fact, but writers on accounting have seemed to prefer to develop a maze of theoretically perfect convolutions rather than to avoid all possible turns.

The accounts of the trustee, like those of the administrator and executor, should be kept in such a way as to facilitate the preparation of the reports to the court. The plan which is here suggested, and which has been found entirely successful in practice, offers a means whereby the reports to the court are easily prepared. From this record trust companies using similar systems mail statements of the accounts to the beneficiaries of the trusts. These statements are prepared by a stenographer by simply copying the ledger pages of the particular trust. In this way no expensive time is required in drawing off such reports. In fact the Northern Trust Company of Chicago, instead of preparing any statements with typewriter or with ink, has photostat copies made of its ledger pages and mailed to the persons interested.

This form of record furnishes a clear and continuous tabulation of the trustee's dealings, and insures care in the trusteeship.

In addition, the account is always an answer to those troublesome people who are born or married into families,

and commence a disturbance because they do not find so much money as they expected, or because the trustee has offended them (very frequently by declining to commit a breach of trust). . . .

If a detailed cash account be required . . . it is readily made up from the statement, and all the usual interrogatories may be readily answered. . . . It enables the trustee to furnish the materials for a complete release, and further to bind the beneficiaries by obtaining their signatures to the detailed accounts. . . . It ensures the receipt of all income, and its proper distribution among the persons entitled to it, and guards against any waste of principal through inadvertence.[1]

§ 656. Form of Records

The most satisfactory way of keeping the accounts of a trustee has been found to be by the use of a synoptic as in Form 29. It will be seen that this shows only the four accounts essential for the trustee, namely, Cash, Investments, Principal, and Income. These four accounts on the synoptic cover the estate as a whole in its relations with all the trusts.

Each of these four accounts of the entire estate serves as a control for the same account of each of the individual trusts, and it is necessary to post each item on the synoptic to a subsidiary record known as the trust ledger. (See Form 30.) This subsidiary ledger is in the same form as the synoptic, and contains an account with each of the trusts. It contains also an account with the undivided principal. This last account is used for all property not specifically divided among the different trusts, for any undivided property which is held to guarantee an annuity and for the residue of the principal of the estate left after providing for all trusts created in the will.

§ 657. Opening the Books

Let us suppose that the trial balance of the books of the executor of this estate after distribution was as follows:

[1] Caldicott, Executorship Accounts.

Account	Debit	Credit
Cash	$ 17,000.00	
Inventory	563,000.00	
Estate Corpus		$579,800.00
Income		200.00
	$580,000.00	$580,000.00

Specific assets or specific sums of money have been set aside by the executor to form the trust funds. As there can never be a trust without a trust fund, the testamentary trustee, whether he is the executor or some other person, cannot assume his duties until the executor as such has specified and set the funds aside. Before making his opening entries the trustee must know what assets are set aside for the various trusts. With this information, he makes a separate entry for each trust, in the following form

Investments	$.....	
Principal		$.....

with a detailed explanation as shown on Form 29, Entry No. 1. The valuation used must be that of the original inventory filed by the executor and approved by the court.

If any cash is included in the trust fund his entry will be (No. 2):

Cash	$.....	
Investments	.....	
Principal		$.....

He proceeds in this way until he has entered all the specific trust funds (see Entry No. 3), and then for the balance of the assets he makes Entry No. 4:

Cash	$.....	
Investments	.....	
Principal		$.....
Income		.....

§ 658. Posting to the Trust Ledger

It then becomes necessary for the trustee to open his trust ledger. This he does by posting each item to the same column on the account of the particular trust which it affects, inserting a check mark or a folio number in the folio column of the synoptic. The folio number is preferable to a check mark. In using loose-leaf records [2] it is customary to give each separate trust a number, which appears on the ledger page of that trust and is used in the folio column of the synoptic.

The folio number of the synoptic page from which the posting is made should be entered on the proper page of the trust ledger.

Although at first glance it seems to involve a large amount of extra labor, it is generally considered time-saving in the end to copy the full explanation of the entry from the synoptic to the page of the trust ledger on which the entry is posted.

If there is only one trust the keeping of the trust ledger will not be necessary, the synoptic becoming the trust ledger as well as the general ledger.

§ 659. Investment of Cash

When the trustee invests any part of the balance of cash which is lying idle, whether this cash is a part of the corpus which was turned over to him by the executor or has come into his hands as a result of the sale of assets, or whether it is income which has been collected by him and is not to be immediately distributed, it is necessary for him to make the following entry (No. 5):

Investments	$.....	
Cash		$.....

This entry, as in the case of all the others, must be posted to the trust ledger.

[2] Prohibited for trustees in some states.

§ 660. Sale of Assets

Let us suppose that the trustee for certain reasons and with the approval of the court decides to sell some of the securities which have been set aside for the Mary Allen Dawson trust. These must be credited to Investments account at the valuation at which they entered this account, which (see § 646) will be the valuation at which they were carried in the original inventory of the estate if they were included in that inventory, or the cost, if they were purchased after the decedent's death. The effect of this entry will be to make the books show that the securities set aside for this fund have been reduced in amount by that valuation, no matter what the cost.

If the securities were sold at a profit the entry will be (No. 6):

Cash (the amount received)	$.....	
Investments (the inventory value or the cost)		$.....
Principal (the profit)		.....

If a loss resulted from the sale the entry will be (No. 7):

Cash (the amount received)	$.....	
Principal (the loss)	.....	
Investments (the inventory value or the cost)		$.....

It is vital to remember that Investments account must be credited at all times with the same value for an asset sold that was used when the asset was first entered in the account, just as the administrator and executor (see § 603) found it necessary to credit Inventory account with the inventoried value of each asset realized upon.

The postings of the above entries to the trust ledger will serve to bring out the effect on the individual trusts of profit or loss on sales. The trusts are enriched or made poorer by such sales, no part of the gain or loss appearing in Income.

§ 661. Receipts and Disbursements of Income

When income is received from interest, dividends, rents, etc., the entry will be (No. 8):

Cash	$.....	
Income		$.....

Like all other entries in the synoptic, this must be posted to the proper account in the trust ledger.

Payments of income to the tenants under the will are entered as follows (No. 9):

Income	$.....	
Cash		$.....

The provision of the will (see § 652) under which Mary Allen Dawson receives income from the trust fund of $100,000, "said payments of income not to exceed $5,000 per annum," creates an indefinite annuity. Income from this fund is, of course, credited to Income account. Payments to Mrs. Dawson, limited to $5,000 annually, are charged to Income account.

Since the will directs that the excess income over $5,000 is to be transferred to the principal of the undivided estate, it is necessary at the close of each year to record this transfer on the books. Suppose that the gross income for the year was $6,230, of which $1,000 was used for expenses, leaving a net income of $5,230. In this case the following entries (Nos. 12 and 13) are needed

Income	$230.00	
Cash		$230.00

and

Cash	$230.00	
Principal		$230.00

The first of these entries is posted to the Mary Allen Dawson Trust account in the trust ledger and the second to the Undi-

vided Estate account. The first indicates the payment of the money from the Mary Allen Dawson trust to the undivided estate; the second records the receipt by the undivided estate of the money from the Mary Allen Dawson trust, as was provided in the will.

If the will had not provided for this transfer of the excess over $5,000—in other words, if that excess had been accumulated to form a part of the principal to pass with the remainder of this fund to Mary Allen Dawson's children by the donor's brother—no such entry would have been necessary. The balance not distributed would have been accumulated in the Income account of this trust.

If the will had directed that the excess income over $5,000 be disposed of by payment to someone else, such payments also would be entered in the form of

Income ..... $.....
  Cash ..... $.....

It is provided in this will that $2,400 annually is to be paid out of the income from the undivided estate to Henry G. Dawson and that such other sums as are necessary from the income of the undivided estate be paid for maintaining and educating the donor's children. These payments will be recorded as are any other distributions of income:

Income ..... $.....
  Cash ..... $.....

§ 662. Payments of Income to Trustee by Executor

It has been pointed out (see § 625) that any advances of income made by a trustee, while still acting as executor, to tenants under the will must be considered as payments of income to the trustee since the tenants have no standing during the period of executorship. If such advances have been made, their recording will necessarily have to show as the first

entries on the trustee's books. The record of each such advance will require two entries, as follows:

(1) Cash	$.....	
Income		$.....
To record the receipt from the executor of income from..... trust fund, which income is being advanced to ....., the tenant under that trust.		
(2) Income	.....	
Cash		.....
To record the paying over of the above advance on income.		

These entries will have to be posted to the proper account in the trust ledger and the transactions must be included in the trustee's report.

§ 663. Expenses

The payment of any expenses which are proper charges against income (see § 649) may be entered as follows (Entry No. 10):

Income	$.....	
Cash		$.....

Any disbursements which are charges against the principal of the estate will in the same way be entered:

Principal	$.....	
Cash		$.....

§ 664. Investment of Income

The will which we are considering provides that out of the undivided estate a certain annuity shall be paid and that such sums as are necessary shall be expended for the maintenance and education of the donor's children. The income received in excess of these needs must be kept invested by the trustee

and must not be allowed to lie idle. Any purchases of securities or other assets with the money thus made available will be entered on the books as follows (No. 11):

Investments	$.....	
Cash		$.....

It will be noticed that this entry does not affect Income account but simply shows the exchange of an asset of cash for an asset of investments. The books still show the amount of income which has been earned and has not been distributed.

When these income investments are sold, any profit would be a credit to Income account instead of to Principal and any loss would be a debit to Income account.

§ 665. Interest on Bank Accounts

Trustees frequently have in certain funds balances of cash too small for ordinary investment but not likely to be needed for some time. As it is considered necessary for this cash to produce income, the general practice is to deposit it in a savings bank. Such a deposit should not be treated as an investment but should continue to be carried as cash.

The interest credited on such savings accounts should be recorded on the books, like other income, by the entry:

Cash	$.....	
Income		$.....

If such income is on funds belonging to different trusts it will have to be prorated between the trusts. Interest received on the average daily balance in a checking account common to all the trusts will have to be prorated on the basis of the average daily balance in each.

§ 666. Trust Fund Passing by Will

The principal of the Janet Dawson Reeves trust is to be paid over to her legatees as directed by her will, under the

provisions of the will of the founder of the trust which we are considering. (See § 652.) If at the time of her death this trust fund consists of $110,230 in investments and $186 in cash, it will be necessary for the trustee of the estate of James C. Dawson to deliver to the executor of the estate of Janet Dawson Reeves the amount of cash and other assets comprising this trust fund and to make the following entry (No. 14):

Principal	$.....	
Cash		$.....
Investments		.....

The will of James C. Dawson provided that upon the death of Mary Allen Dawson the principal of the trust fund bearing her name was to be divided among her children by the donor's brother. When the assets composing this fund are turned over to these children, the entry will be, as in the case of the Janet Dawson Reeves trust above:

Principal	$.....	
Cash		$.....
Investments		.....

§ 667. Reversion of Trust Fund to Estate

It is provided in the will that the Butler University trust at the end of twenty years shall revert to the undivided estate. Suppose that, due to sales and reinvestment, this fund at the end of that time amounts to $47,326. This is an increase of $7,326 over the amount of the original trust. To record the reversion the trustee should make Entries Nos. 15 and 16

Principal	$.....	
Investments		$.....

and

Investments	$.....	
Principal		$.....

As will be seen from the postings on the trust ledger, the purpose of the first of these entries is to close out the Butler University Trust account and that of the second is to record the securities in the account of the undivided estate.

If any cash is included in the fund the entries will be (compare Entry No. 14)

Principal	$.....	
Cash		$.....
Investments		.....

and

Cash	$.....	
Investments	.....	
Principal		$.....

§ 668. Reasons for Amortization of Bond Premium and Discount

Bonds are seldom bought at their face value. The market value is a fluctuating quantity differing from the face value because of general financial conditions, the popular opinion of the value of the security, the rate of interest provided for, etc. A bond is very likely to be bought for a larger sum than the amount which upon its maturity it will return to the purchaser. If, for example, a $1,000 bond is bought for $1,043.80, the yield to the purchaser will be the interest on $1,000 at the specified rate during the life of the bond and at maturity the $1,000 of principal. The $43.80 is a premium paid for the privilege of receiving this interest during the life of the bond.

If a trustee, desiring to secure investments which would yield a profitable income, were to purchase a large number of bonds at a premium, the interest all being paid to the tenant, and the remainderman not only receiving no income, but also losing the amount of the premium paid on the bonds, the principal of the trust would in time become seriously depleted. Since secure investments yielding a good rate of interest

usually sell at a premium, in order to allow trustees to purchase such bonds with equal justice toward both the tenant and the remainderman, the courts allow the premium paid on bonds to be "amortized" over the life of the bond.

As has been shown, the premium is an amount paid for the privilege of receiving the interest on the principal during the life of the bond. This premium is therefore a just charge against income, but the courts do not allow it to be deducted from the income of the year in which paid, as it would very frequently amount to more than that year's income from the particular bond on account of which it was incurred and would consequently deprive the tenant of all his income for the one year. "Amortization" means the gradual extinguishment of the premium paid by the trustees on bonds bought out of the principal funds, so that during the years preceding the maturity of the bond the income to the life tenant will have been reduced sufficiently to wipe out the premium during the life of the bonds.

§ 669. Law of Amortization

The statutes of the different states vary in regard to the propriety of amortization, and are not always consistent in applying the same principles to bond premium and discount.

> In New York the practice of amortization is upheld by the courts as an equitable and proper way of handling trust funds. In the State, however, the principle only holds good with reference to securities purchased by the trustee at a premium and not with reference to securities, owned by the testator which the trustee has taken over, appraised at a premium. In other words the whole interest received from securities turned over from the estate of the testator should be treated as income and the life tenant should not be charged with any part of the premium at which such securities may have been inventoried.
>
> Of course the terms of the will and the surrounding circumstances might show a different intention on the part

of the testator. For uniformity of practice the court has decided that this intent to have the life tenant receive the full income from securities purchased at a premium, without reduction by amortization, must be expressed in the very clearest manner.[8]

§ 670. Methods of Calculating Amortization

There are several methods of handling amortization, of which the two most common are the straight-line method and the annuity method.

By the straight-line method the premium is simply divided by the number of interest payments which will be made on the bond and the income from the bond reduced at the time of each payment by this part of the premium. The following table will show how the premium of $43.80 paid on the purchase of a 6 per cent bond having a face value of $1,000, with 5 years to run, interest payable semiannually, will be amortized by the straight-line method.

Date	Interest Received	Income to Tenant	Amortization of Principal	Book Value
July 1, 1920				$1,043.80
Jan. 1, 1921	$ 30.00	$ 25.62	$ 4.38	1,039.42
July 1, 1921	30.00	25.62	4.38	1,035.04
Jan. 1, 1922	30.00	25.62	4.38	1,030.66
July 1, 1922	30.00	25.62	4.38	1,026.28
Jan. 1, 1923	30.00	25.62	4.38	1,021.90
July 1, 1923	30.00	25.62	4.38	1,017.52
Jan. 1, 1924	30.00	25.62	4.38	1,013.14
July 1, 1924	30.00	25.62	4.38	1,008.76
Jan. 1, 1925	30.00	25.62	4.38	1,004.38
July 1, 1925	30.00	25.62	4.38	1,000.00
Total	$300.00	$256.20	$43.80	

§ 671. The Annuity Method

Under the annuity method it is necessary to use a table of bond values. In the case of the bond above referred to, such a table would show that a 6 per cent $1,000 bond, interest payable semiannually, bought for $1,043.80, with 5 years

[8] Baugh and Schmeisser, Theory and Practice of Estate Accounting.

to run, will return to the investor 5 per cent annually on the amount of the investment. Since $1,043.80 is the amount invested, the income at 5 per cent per annum will be $26.08 at the time of the first semiannual interest payment. The amount actually received, however, will be one-half year's interest at 6 per cent on $1,000, or $30. The difference between this amount and the $26.08 of actual earning power of the investment will constitute the amount of this period's amortization to be placed to the credit of the principal of the trust. The book value of the bond will then be reduced by this $3.92 from $1,043.80 to $1,039.88 and the one-half of 5 per cent for the next 6 months calculated on the basis of an investment of $1,039.88.

> Thus, the life tenant receives more during the first years, but less during the later years of the life of any bond, and at the maturity of the same the amounts amortized should have been so calculated that the book value of the bond will be its face, or par value, and the premium will have been paid by the amortized amounts added to the corpus at the end of each six months' interest period.[4]

The following table will show how the premium on this bond is amortized over the life of the bond by the annuity method:

Date	Interest Received	Income to Tenant	Amortization of Principal	Book Value
July 1, 1920				$1,043.80
Jan. 1, 1921	$ 30.00	$ 26.08	$ 3.92	1,039.88
July 1, 1921	30.00	26.00	4.00	1,035.88
Jan. 1, 1922	30.00	25.89	4.11	1,031.77
July 1, 1922	30.00	25.79	4.21	1,027.56
Jan. 1, 1923	30.00	25.69	4.31	1,023.25
July 1, 1923	30.00	25.58	4.42	1,018.83
Jan. 1, 1924	30.00	25.47	4.53	1,014.30
July 1, 1924	30.00	25.34	4.66	1,009.64
Jan. 1, 1925	30.00	25.24	4.76	1,004.88
July 1, 1925	30.00	25.12	4.88	1,000.00
Total	$300.00	$256.20	$43.80	

[4] Baugh and Schmeisser, Theory and Practice of Estate Accounting.

§ 672. Entries of Amortization

When premium on a bond is being amortized, the book entry of each receipt of bond interest will be:

Cash (the amount received)	$.....	
Income (the amount of income to be allowed)		$.....
Principal (the amount of amortization)		.....

The credit to Income will be the amount placed in the Income to Tenant column of a table worked out by either of the two above methods. The credit to Principal will be the amount placed in the Amortization of Principal column.

When bond discount is to be amortized, as when government bonds, yielding a low rate, are bought below par, the average return being raised on account of the low cost, the entry at the time interest is received is:

Cash (the amount received)	$.....	
Principal (the amount of amortization)	.....	
Income (the amount of income to be allowed)		$.....

Review Questions

1. Why should a trustee's accounts be simple?
2. What four accounts must a trustee keep? What is the relation between the accounts for the entire estate and the accounts for the individual trusts?
3. What are a trustee's opening entries?
4. Explain posting to the trust ledger. Should the explanation of each entry be copied?
5. What is the entry for investment of cash?
6. How are sales of assets entered to show loss or gain?
7. What are the entries for receipts and disbursements of income? What is the entry when income is turned into principal?
8. How are any advances treated which were made before the trustee entered on his position?

9. When should savings accounts be opened?
10. What entries are made when a trust fund passes by will?
11. If a trust fund reverts to the estate, what entries are made?
12. What is the object of amortizing any premium paid on bonds? How is it effected?
13. How is the principle of amortization applied in New York? What is the rule in your own state?
14. Explain the straight-line method of handling amortization.
15. Explain the annuity method of computing amortization.
16. What entries are made to show the process of amortization? What entries are made to show the amortization of a discount?

CHAPTER LXXIV

TRUSTEES' REPORTS

§ 673. General Form

The periodical reports made by trustees to the court are in two parts, the first of which has to do with the principal and the second with the income. These are preceded by a summary of the condition of the estate as a whole. The supporting schedules which make up the larger part of the report analyze this summary in its relation to the principal and income of each individual trust.

At either the beginning or the end of the report should appear the certificate of the trustee as to the correctness of the report. The practice in the various states differs as to the form of this certificate, and at least the first one submitted by the trustee should be prepared with the assistance of his attorney.

The form to be followed in the schedules is specifically provided for in a few states, but the statutes of all mention the things to be shown. It should always be remembered that the court will have the report audited, and that expense to the estate will be saved if the schedules are clear and if they reconcile properly among themselves and with the books. In the following sections there are presented the principles generally followed and specimen schedules that will be found suitable in most states.

§ 674. Valuations Used

All assets of the estate must be carried in the reports at their book values. These are, in the case of assets which were

included in the original inventory of the estate, the valuations at which they were appraised for that inventory, and in the case of assets purchased since the preparation of that inventory, the cost to the estate.

For the information of the court, many states require that the report of the trustee give also the market value or "bid" price on the day as of which the report is prepared. This means the day on which the trustee has closed his books, the last day whose transactions are included in the report. As it will probably take the trustee some time to prepare his report, it will usually not be actually filed until later. Under no conditions, however, should the books be changed to agree with the market value at any time during the trusteeship. If the asset becomes absolutely worthless it may, if desired, be written off by the entry

Principal	$.....	
Investments		$.....

but if this is done the asset must continue to be carried in the reports and accounted for as of no value.

§ 675. Closing the Books

It is unnecessary for the trustee who uses the simple system outlined in the two previous chapters to close his books at the time of making a report. If he uses a more complicated system which analyzes the various sources of income with separate accounts for interest, dividends, etc., and the various kinds of expenses, with separate accounts for taxes, insurance, repairs, etc., it will be necessary for him to close these accounts into Income in the way in which the nominal accounts are ordinarily closed into Profit and Loss in double-entry commercial bookkeeping.

When the trusteeship is finally wound up, all the assets be-

ing turned over to the remaindermen, the trustee should close all the accounts on his books so that there will be no balance left in any of them. With the system outlined in the preceding two chapters the final closing entry would be:

Principal	$.....	
Income	.....	
Cash		$.....
Investments		.....

§ 676. Index to the Report

The report of a trustee who is handling more than one trust contains a considerable number of schedules. For the convenience of everyone who has to do with the report, it is always wise to furnish an index in the form of a list of schedules. This index may be in substantially the following form:

ESTATE OF JAMES C. DAWSON
FIRST ANNUAL REPORT OF CHARLES FRAZIER, TRUSTEE
FILED AS OF JANUARY 31, 1922

LIST OF SCHEDULES

Summaries

Schedule No. 1 Summary Statement of Trusts

Principal

Trust No. 1, for the Benefit of Butler University
Schedule No. 2 Principal of Trust, January 31, 1922
Schedule No. 3 Sales During Year
Schedule No. 4 Purchases During Year
Schedule No. 5 Reconciliations

Trust No. 2, for the Benefit of Janet Dawson Reeves
Schedule No. 6 Principal of Trust, January 31, 1922
Schedule No. 7 Sales During Year
Schedule No. 8 Purchases During Year
Schedule No. 9 Reconciliations

Trust No. 3, for the Benefit of Mary Allen Dawson

Schedule No. 10 Principal of Trust, January 31, 1922
Schedule No. 11 Sales During Year
Schedule No. 12 Purchases During Year
Schedule No. 13 Reconciliations

Trust No. 4, to Guarantee an Annuity to Henry G. Dawson and to Maintain and Educate the Children of James C. Dawson

Schedule No. 14 Principal of Trust, January 31, 1922
Schedule No. 15 Sales During Year
Schedule No. 16 Purchases During Year
Schedule No. 17 Reconciliations

Income

Trust No. 1, for the Benefit of Butler University

Schedule No. 18 Receipts
Schedule No. 19 Disbursements

Trust No. 2, for the Benefit of Janet Dawson Reeves

Schedule No. 20 Receipts
Schedule No. 21 Disbursements

Trust No. 3, for the Benefit of Mary Allen Dawson

Schedule No. 22 Receipts
Schedule No. 23 Disbursements

Trust No. 4, to Guarantee an Annuity to Henry G. Dawson and to Maintain and Educate the Children of James C. Dawson

Schedule No. 24 Receipts
Schedule No. 25 Disbursements
Schedule No. 26 Investments of Income

§ 677. Summary Statements of Trusts

Schedule No. 1 is used to show the general condition of the entire estate in the hands of the trustee on the date as of which the report is filed. If any form is prescribed it should be used, otherwise it may be presented in the following form:

ESTATE OF JAMES C. DAWSON
FIRST ANNUAL REPORT OF CHARLES FRAZIER, TRUSTEE
FILED AS OF JANUARY 31, 1922

Schedule No. 1

SUMMARY STATEMENT OF TRUSTS

Showing Condition on January 31, 1922

Principal

Trust No.	Beneficiary	Cash	Investments	Total
1	Butler University		$ 40,000.00	$ 40,000.00
2	Janet Dawson Reeves.....	$ 186.00	110,230.00	110,416.00
3	Mary Allen Dawson.....	6,567.00	94,366.00	100,933.00
4	Undivided Estate	1,924.00	335,846.00	337,770.00
	Totals	$8,677.00	$580,442.00	$589,119.00

Income

Trust No.	Beneficiary	Cash	Investments	Total
1	Butler University	.....	.....	.....
2	Janet Dawson Reeves.....	.....	.....	.....
3	Mary Allen Dawson.....	.....	.....	.....
4	Undivided Estate	$9,454.00	$ 5,346.00	$ 14,800.00
	Totals	$9,454.00	$ 5,346.00	$ 14,800.00

Reference to the preceding chapter and to the synoptic and trust ledger worked out therein will show where the figures appearing on this schedule were obtained. In total they constitute the trial balance of the synoptic at the close of business on January 31, 1922, except that in this schedule cash is divided between principal and income. In detail the various statements on the schedule represent the trial balances of the various accounts in the trust ledger on that date. These various amounts are analyzed in the supporting schedules which follow.

§ 678. Schedules of Principal

The amount of the principal of a trust at any time is the figure obtained by the following arithmetical steps:

1. Given the principal at the start, which may be the amount when the trust was established or the amount at the date of last previous report rendered by the trustee.

2. Add any increase due to profit on sales of assets or subtract any loss.

3. Add any increase to the principal due to the reversion of excess income to the principal (see § 667), or to any other cause.

4. Subtract any reduction of principal due to distribution or other causes.

The amount of cash on hand at any date is the sum of the amount at the start, plus the amount received from sales, from reversions of income, and from other causes, less the amount disbursed for purchases, expenses, and in distribution.

The book value of the investments will in the same way be the amount at the start, less the book value of the sales, plus the cost of the purchases, plus or minus any changes in the amount of the principal due to additional donations or to distribution.

The schedules having to do with principal are so designed as to show the changes in cash, investments, and principal from each of the above causes, and to group the transactions under each of these heads in such a way that the mathematical accuracy of the figures in the summary statements may be seen and the propriety of the trustee's transactions examined into.

§ 679. Inventory Schedules

The next schedule suggested for each trust is what may be called an "inventory schedule." The general rules for the amount of description to be given in inventories furnished by fiduciaries (see § 282) should be followed.

The headings which it is necessary to show are Cash and Investments. Under Cash should be detailed the various depositories with the amounts in the possession of each and the pass-book number or any other identifying information.

The general heading, Investments, should be split up into the necessary subclassifications. Those which are most common are Real Estate, Mortgages, Notes Receivable, Stocks (or "Shares" as they are called in some jurisdictions) and Bonds. Others are accounts receivable, unsecured notes receivable, jewelry, etc. In brief, each asset should be so described as to distinguish it absolutely.

Such a schedule may be in the following form:

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Schedule No. 2

Principal of Trust No. 1
For the Benefit of Butler University
January 31, 1922

Cash		None
Investments:		
Real Estate	None	
Mortgages:		
James Curtis and Anne Curtis, his wife, 5% first mortgage on Lots 17, 18, and 19, Swain's Addition to Town of Worthington, Greene County, Indiana, with improvements consisting of two-story brick dwelling and brick garage, assessed at $9,300	$ 5,000.00	
Stocks:		
100 shares Appleton Mining Co. 7% preferred stock, represented by Certificate No. 212, par value $10,000, present market value $10,450	$10,300.00	

100 shares Lewiston Realty Co. 7% preferred stock, represented by Certificate No. 21 for 10 shares and No. 22 for 90 shares, par value $10,000, present market value $9,900.	9,700.00		
Total		20,000.00	
Bonds:			
American Belting Co., 1950, regular 5%, Nos. 511 to 525 inclusive, par value $15,000, present market value $14,850..		15,000.00	
Total Investments			$40,000.00
Total Principal			$40,000.00

§ 680. Schedules of Sales

The schedule following in the group having to do with the principal of the trusts is that listing the sales of assets from each trust by the trustee during the year. All information having to do with the sales should be shown, including the date of the court order authorizing the sale, a list of the items sold, the gross proceeds of each sale, the expense of the sale, and the difference between these two amounts or the net proceeds. The value at which the asset now sold has been carried on the books should also be given, and the schedule should be summarized by showing the difference between the net proceeds of the sale and the book value of the assets sold. This difference will be the net increase or decrease in the principal on account of sales during the year.

The schedule listing the sales may be in substantially the form given on page 686.

If there have been no sales during the year the schedules should be headed up in the manner suggested above, but in-

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Schedule No. 11

PRINCIPAL

Sales of Assets of Trust No. 3,
For the Benefit of Mary Allen Dawson,
During Year ended January 31, 1922

Date of Authorizing Order	Sale of	Selling Price	Commission	Net Proceeds	Book Value
Feb. 10, 1921	40 shares Stevenson Manufacturing preferred stock	$ 4,600.00	$ 5.00	$ 4,595.00	$ 3,400.00
"	Bond of American Tinplate Company	920.00	1.00	919.00	950.00
	Various items not detailed here	17,211.00	52.00	17,159.00	17,390.00
	Totals	$22,731.00	$58.00	$22,673.00	$21,740.00

Summary

Net Proceeds	$22,673.00
Book Value	21,740.00
Net Increase in Principal	$ 933.00

stead of any list the words "No sales during the year" should be inserted.

§ 681. Schedules of Purchases

The schedules of purchases of assets for the principal of each trust require usually only the date of the authorizing order, the list of items purchased, their cost, and the expense of purchase, the sum of which makes up the gross amount paid. This schedule may be in the following form:

ESTATE OF JAMES C. DAWSON
FIRST ANNUAL REPORT OF CHARLES FRAZIER, TRUSTEE
FILED AS OF JANUARY 31, 1922

Schedule No. 8

PRINCIPAL

Purchase of Assets for Trust No. 2,
For the Benefit of Janet Dawson Reeves
During Year ended January 31, 1922

Date of Authorizing Order	Purchase of	Cost	Expense of Purchase	Gross Amount Paid
Feb. 12, 1921	$10,000 of 5½% bonds of city of Montrose, Colorado	$10,200.00	$ 10.00	$10,210.00
	Various items not detailed here	60,300.00	90.00	60,390.00
	Totals	$70,500.00	$100.00	$70,600.00

If no purchases have been made during the year the schedules should be shown but the words "No purchases during the year" will take the place of the usual list.

§ 682. Reconciliations of Principal

The changes in the Cash, Investments, and Principal accounts (see § 678) during the year are shown in summary in the last of the schedules of principal. To the cash which the

trustee took over from the executor (or, after the first periodical report of the trustee has been filed, to the cash on hand at the date of the last previous report) is added the amount of the net proceeds of sales. From this sum there is subtracted the gross amount paid for purchases. Changes in the Cash account arising from any other purchases are then added or subtracted.

The changes in the Investments account are shown by subtracting the book value of the assets sold from the book value at the beginning of the period, and adding the gross amount paid for assets purchased. Any other changes must be separately shown below.

The principal at the close of the period is ordinarily the amount of the principal at the beginning of the period, amended by any change caused by profit or loss on sales of assets. Should any other items affect the principal they must be shown below.

The following is a satisfactory form for such a schedule as this:

ESTATE OF JAMES C. DAWSON
FIRST ANNUAL REPORT OF CHARLES FRAZIER, TRUSTEE
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Schedule No. 17

PRINCIPAL

Reconciliations, Trust No. 4,
To Guarantee an Annuity to Henry G. Dawson and to
Maintain and Educate the Children of
James C. Dawson

		Cash	Investments	Principal
Feb. 12, 1921	On hand as per trustee's inventory	$ 5,148.00	$334,652.00	$339,800.00
	Sales (Schedule 15):			
	Net Proceeds .	31,200.00	.....	.....

	Book Value ..	.....	33,460.00	.....
	Decrease in Principal ...	.....	.....	2,260.00
		$36,348.00	$301,192.00	$337,540.00
	Purchases (Schedule 16).	34,654.00	34,654.00	.....
		$ 1,694.00	$335,846.00	$337,540.00
	Excess income from Mary Allen Dawson Trust transferred to principal of Undivided Estate (Schedule 25).	230.00	.....	230.00
Jan. 31, 1922	On hand (Schedule 1)	$ 1,924.00	$335,846.00	$337,770.00

The opening figures in each column must be those which appeared on the summary schedule of the last previous report rendered by the trustee. The figures of sales must be taken from the schedules of sales and those of purchases from the schedules of purchases. Any other transactions which must be recorded in order to bring the balances in the various accounts to the figures shown on the summary schedule in the present report are then shown. It is in this way that the mathematical accuracy of the report is demonstrated. It is evident that the sum of the final totals of cash and investments must equal the total of principal in the reconciliation statement of each trust and in the summary schedule (No. 1) for all trusts.

§ 683. Schedules of Income

The schedules of income are ordinarily two for each trust. The first of these has to do with the receipts, and the second

with disbursements. The facts which should be shown are sufficiently indicated by the schedules which follow:

ESTATE OF JAMES C. DAWSON
FIRST ANNUAL REPORT OF CHARLES FRAZIER, TRUSTEE
FILED AS OF JANUARY 31, 1922

Schedule No. 21

INCOME

Receipts, Trust No. 2,
For the Benefit of Janet Dawson Reeves,
During Year ended January 31, 1922

Date	Nature	Produced by	Amount
Feb. 12, 1921	Balance	Trustee's inventory	None
Mar. 1, 1921	Rent	Apartment house on Lots 7-12, etc.	$ 350.00
	Various items not detailed here.....		8,300.00
	Total		$8,650.00

ESTATE OF JAMES C. DAWSON
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FILED AS OF JANUARY 31, 1922

Schedule No. 25

INCOME

Disbursements, Trust No. 3,
For the Benefit of Mary Allen Dawson,
During Year ended January 31, 1922

Date	Paid to	For	Amount
May 1, 1921	Collector of Taxes..	State, county, city taxes	$ 429.62
May 2, 1921	Life Tenant.....	Income from this trust	1,000.00
July 1, 1921	"	"	1,000.00
Sept. 1, 1921	"	"	1,000.00
Nov. 1, 1921	Collector of Taxes..	State, county, city taxes	429.62
Nov. 1, 1921	Life Tenant.....	Income from this trust	1,000.00
Jan. 1, 1922	"	"	1,000.00
Jan. 31, 1922	Salaries and office rent and expense.....		140.76

Jan. 31, 1922	Transfer of excess income to Undivided Estate (Schedule No. 24)	230.00
Jan. 31, 1922	Balance (Schedule No. 1)	None
	Total	$6,230.00

The opening balance of income cash should be shown as the first item on the schedule of receipts. (See Schedule No. 21.) The closing balance of income cash, with the location of the deposit and the number of the pass-book, should be shown as the last item in the schedule of disbursements. (See Schedule No. 25.) It is essential that in the case of each trust the total of the schedule of receipts equal the total of the schedule of the disbursements.

If there have been any sales or purchases of assets for the account of income, as in the case of Entry No. 11 on the synoptic of the suppositional trust which we are considering, additional schedules of such purchases and sales and of the inventory of such assets now held must be added for the trusts affected. These schedules will be in the same form as the similar schedules of principal.

Review Questions

1. What form of trustee's report is used in your state?
2. At what value are trust assets carried on the books?
3. Is it necessary to close the books to make a report? When the books are finally closed, what will be the entries?
4. Why should there be an index to the trustee's report?
5. What should be shown on the first schedule? When are the figures obtained for this schedule?
6. What arithmetical steps are needed to ascertain the amount of the principal of a trust at any time? What is the purpose of the schedules that deal with the principal?
7. What is the object of the inventory schedules? What are the headings? What should go under each?

8. What goes in the schedules of sales?
9. What goes in the schedules of purchases?
10. How are the changes in cash during the year shown? In Investments account? In the principal? What is the object of these reconciliation statements?
11. What do the schedules of income show? Why must they balance?

CHAPTER LXXV

ACCOUNTING BY TRUST COMPANIES

§ 684. Separate Books for Each Estate Impossible

It must be admitted that the ideal accounting system for fiduciaries is to have an individual set of books for each separate estate represented. In the case of trust companies acting as fiduciaries, however, this is impracticable because of the great amount of labor which would be required if a separate set of books were kept for each of the large number of estates for which the average bank or trust company acts. When an individual is acting in a fiduciary capacity it is strongly recommended that a complete set of books be kept, separate from all other business, but for banks and trust companies it is necessary to devise a system of accounting which will retain the most valuable advantages of the individual sets of books and yet eliminate all unnecessary details.

§ 685. Systems in Use by Trust Companies

The method of handling individual trustees' accounts outlined in the previous chapters is equally adaptable for trust companies. All transactions are handled through the synoptic, and are posted to the trust ledgers in the usual way. For the sake of uniformity the same forms are used by trust companies and trust departments of banks in all their fiduciary functions, including administratorship, executorship, and trusteeship.

Form 31 shows the rulings of synoptics in use by two such companies. It will be noticed that the first of these is what is known as a "double-page form." The upper section is the left-hand page, the lower is the right. The use of the synoptic

has been explained fully. In examining Form 31 it must be remembered that each of these companies uses the same form of sheet for the trust ledger as for the synoptic.

There is presented in the following sections another type of system. The forms suggested and explained in connection therewith will be found adapted to the use of the trust departments of the vast majority of banks and trust companies.

§ 686. The Control Sheet

Form 32a is the control sheet. When the estate is taken over, all the assets should be entered in the column headed Inventory at the appraised value. If this is not available the market value as of the date of death of the decedent may be used temporarily, or if neither is available a nominal value of $1 may be accepted. The correct value should, of course, be obtained at the earliest possible moment and an adjusting entry made to carry the items at this value. The total of the entries which up to this point are all credits to corpus should be carried over to the column headed, Corpus—Credit Balance.

As additional assets of the estate are taken over the same kind of entries will be made in the same way. It will be noticed that the only entries to be made on this sheet after the inventory are those which affect the corpus of the estate either by way of an increase—the result of the sale of an asset at a profit over inventory price (or occasionally the discovery of an uninventoried asset)—or a decrease, the result of the sale of an asset at a loss, or the payment of a debt of the decedent, the payment of a corpus expense, or the payment of a bequest.

Such changes in the amount of the corpus are provided for as follows: All expenses of administration, the payment of all debts of the decedent and all payments to beneficiaries should be entered in the column headed, Distributions, Expenses, and Debts—Debit. Any loss incurred in a sale of an asset should be entered in the column headed, Decrease—Debit. In the

same way the amount of profit realized in the sale of an asset above the appraised value should be entered in the column headed, Increase—Credit.

Each entry made in these columns is the result of a change in the amount of corpus, and its effect must be shown by inserting on the same line in the Corpus—Credit Balance column the new corpus. This will be the previous balance less the amount of the new entry if it is a debit or plus its amount if it is a credit.

It will be evident that, since the only entries that are made on this sheet are those which affect the corpus of the estate by increasing or decreasing it, the entry for the sale of an asset should, so far as this sheet is concerned, show only the amount of profit or loss and not the amount at which the asset was originally inventoried.

Form 32a is designed to be used in administratorships and executorships. When a bank or trust company is acting as a trustee, either of an estate or under a voluntary trust agreement, Form 32i may be used. Except for the additional information called for at the top of the latter form, it is to all intents the same as Form 32a, and all the entries suggested in this chapter for Form 32a are equally applicable for Form 32i if that is substituted.

§ 687. Bank Balances Schedule

On Form 32b are entered all bank accounts which the decedent had during his lifetime, including savings bank accounts. These items were, of course, entered on the control sheet as a part of the original inventory. The control sheet, however, will not show their reduction or complete collection, as it shows only changes in the amount of corpus. When these assets are collected, entries recording this fact will be made in the credit column of the bank balances schedule. The headings of the other columns are self-explanatory.

§ 688. Stocks Schedule

Form 32c is used for all stocks which may form a part of the estate. It is divided into several different blocks to facilitate the keeping of separate accounts for each particular kind of stock. In this way no difficulty is experienced in tracing the different events in the history of the administration of the estate relating to any one particular security. Each block provides for the entry of full information about the stock recorded therein.

When the stock is taken into possession by the executor it will be recorded as a part of the inventory on the control sheet at the market price or appraised value as of the date of death. It will also be recorded on Form 32c in the column headed, Received—Debit.

When the stock is sold there will almost certainly be either a loss or a gain. The loss or gain affects the corpus of the estate and is therefore recorded on Form 32a, as heretofore explained. The inventory value, which will be the same as the figure appearing in the Received—Debit column, will at the time of sale be recorded in the column headed, Delivered—Credit. Thus the asset is removed from the books, having been exchanged for another asset, namely, cash. The balance column requires no explanation. Such information as the dividend rate, certificate numbers, conversion privilege, etc., should be obtained and entered on the form for reference when needed.

§ 689. Investments Schedule

Form 32d provides for the recording of assets consisting of bonds, notes, etc., except bonds and mortgages on real property. The form is similar to Form 32c and should be handled in the same way. Anyone at all familiar with transactions in securities will at once see the advantage of having the special information called for in these forms.

§ 690. Accrued Receivables Schedule

Form 32e provides a place in which to record the class of assets found in almost every estate and generally known as "accrued receivables." This class includes all interest accrued to the date of death of the decedent not collected by him before death, whether past due or not yet due, dividends declared before the date of death but not actually paid or collected, and all similar assets which are a part of the corpus of the estate. The use of the columns is self-explanatory.

§ 691. Real Estate and Mortgages Schedule

A careful study of Form 32f is desirable, as it is one of the most important of the entire set. It is used for the recording of all bonds and mortgages on real property forming a part of the corpus of the estate, and also of all real property owned. A separate sheet should be used for each mortgage and for each piece of real property.

First we shall explain the use of the form to record a bond and mortgage. The bond and mortgage would in all cases be recorded as a part of the inventory of the estate on Form 32a as a credit. The debit will appear on Form 32f. The information required properly to fill out the form should be obtained at the earliest possible moment and entered in the places indicated. If a trust estate is being handled, mortgages on real property will form an important part of the investment.

A description of the property should be entered in brief so that the property can be quickly identified without a reference to the mortgage, which would probably be kept in the vaults and be therefore not readily accessible. If the property is located in a city, the section and block numbers are important. Frequent appraisals of the property under mortgage should be had and a record of such appraisals entered in the books. The tax bills should be examined by the trustee after every tax-paying period, and this fact should be entered. The

interest columns are important as a record but not as a part of the accounting because interest is income and therefore not to be entered in the corpus forms. (See § 696.) The columns at the extreme right of this form are devised for the purpose of keeping a complete record of the insurance on the property mortgaged.

When it is desired to use the form for the purpose of recording real property, all that is necessary is to strike out the word "Mortgages" from the title. Most of the other information is helpful, but the spaces which apply only to mortgages (such as interest, mortgage date, principal due, extended to, etc.) are not used.

The reverse of the form is used for any additional information which may be desired, such as a list of papers received in connection with the property, etc.

§ 692. Miscellaneous Schedule

Form 32g is for the purpose of recording any other assets of an estate which may come into the hands of the executor, such as jewelry, works of art, household furniture, clothing, and the like.

§ 693. Cash Schedule

The cash sheet, Form 32h, is most important because on it are recorded all transactions involving corpus cash. It is set up in such a way that the person preparing the account of proceedings may the more readily pick out the items to be placed in particular schedules.

When the executor first enters upon his duties he will find little or no cash. Usually a decedent does not have more than a few dollars in actual cash. The general practice of trust companies is to consider money in a decedent's deposit account in a bank as not being cash until it has been taken possession of. Following this theory the trust company acting as execu-

tor, when it receives the bank book or other evidence showing that the decedent maintained a bank account with a certain bank and that the balance in that bank on the date of death was a given sum, enters the amount on Form 32a as a credit to the estate in the inventory column, thus making itself accountable for the amount. The debit is entered on Form 32b. When the trust company has filed its certificate of appointment as executor and thus shown its right to handle the funds, the bank account should be entered on Form 32h in the second column as a debit, Realization of Assets, Personalty.

If the executor sells a piece of real property, as he may do where such a power is conferred upon him by the will, he will enter the proceeds of the sale in the first column on this form as a debit, Realization of Assets, Realty. In the case of a realization of cash from the sale of a piece of real property the credit would be on Form 32f.

From time to time, as the various assets which the executor took into possession are sold and thus converted into cash, entries will be made in one of the two columns mentioned, namely, (1) Realization of Assets, Realty, (2) Realization of Assets, Personalty. The third debit column is provided for cash found in the possession of the decedent or in his safety deposit box after he dies. This would include gold coins and the like.

On the credit side we have three columns whose headings will readily explain their uses. The entries in each of these columns, it will be seen, affect the corpus of the estate and therefore will be entered on Form 32a in the first column, which is a debit column. Thus we have the debit and credit entries.

Particular attention should be called to the fact that this schedule has to do with *corpus* cash only. Income transactions are handled through Form 32j. (See § 696, "Accounting for Income.")

§ 694. Summary of Entries

That the above is a complete double-entry system will be shown by the following analysis showing the two sides to the entry of every transaction:

Bank Accounts of Decedent (§687).

1. When executor takes possession:

Bank Balances (on Form 32b)	$.....	
Inventory (on Form 32a)		$.....

2. As executor realizes these balances:

Cash (on Form 32h).....	$.....	
Bank Balances (on Form 32b).....		$.....

Stocks (§688).

1. When executor takes possession:

Stocks (on Form 32c).....	$.....	
Inventory (on Form 32a).....		$.....

2. When stocks are sold at a loss:

Cash (on Form 32h).....	$.....	
Decrease (on Form 32a).....	.....	
Stocks (on Form 32c).....		$.....

3. When stocks are sold at a profit:

Cash (on Form 32h).....	$.....	
Increase (on Form 32a).....		$.....
Stocks (on Form 32c).....		.....

Investments (§689).

1. When executor takes possession:

Investments (on Form 32d).....	$.....	
Inventory (on Form 32a).....		$.....

2. When investments are sold at a loss:

Cash (on Form 32h)	$.....	
Decrease (on Form 32a)	.....	
Investments (on Form 32d)		$.....

3. When investments are sold at a profit:

Cash (on Form 32h)	$.....	
Increase (on Form 32a)		$.....
Investments (on Form 32d)		.....

Accrued Receivables (§690).

1. When executor takes possession:

Accrued Receivables (on Form 32e)	$.....	
Inventory (on Form 32a)		$.....

2. When executor collects:

Cash (on Form 32h)	$.....	
Accrued Receivables (on Form 32e)		$.....

Real Estate and Mortgages (§691).

1. When executor takes possession:

Real Estate and Mortgages (on Form 32f)	$.....	
Inventory (on Form 32a)		$.....

2. When mortgages are collected:

Cash (on Form 32h)	$.....	
Real Estate and Mortgages (on Form 32f)		$.....

3. When real estate is sold at a loss:

Cash (on Form 32h)	$.....	
Decrease (on Form 32a)	.....	
Real Estate and Mortgages (on Form 32f)[1]		$.....

[1] No column is needed on the form for the credit entry of payment of the mortgage or sale of the property, which is noted by indorsement on the face of the form.

4. When real estate is sold at a profit:

Cash (on Form 32h)	$.....	
Increase (on Form 32a)		$.....
Real Estate and Mortgages (on Form 32f)[2]		.....

Miscellaneous Assets (§692).

1. When executor takes possession:

Miscellaneous Assets (on Form 32g)	$.....	
Inventory (on Form 32a)		$.....

2. When sold at a loss:

Cash (on Form 32h)	$.....	
Decrease (on Form 32a)	.....	
Miscellaneous Assets (on Form 32g)		$.....

3. When sold at a profit:

Cash (on Form 32h)	$.....	
Increase (on Form 32a)		$.....
Miscellaneous Assets (on Form 32g)		.....

4. When distributed:

Distributions, Expenses, and Debts (on Form 32a)	$.....	
Miscellaneous Assets (on Form 32g)[3]		$.....

It is believed that from these common entries it will be plain how to handle other transactions which may arise.

§ 695. Making Up the Final Acccount

When the time has arrived for the executor to make up his final account of proceedings, he will find that by taking from Form 32a the inventory, and by charging himself with that,

[2] No column is needed on the form for the credit entry of payment of the mortgage or sale of the property, which is noted by indorsement on the face of the form.

[3] The distribution of any other assets is handled in the same manner, the proper asset account being credited.

he has the first schedule of his account complete; or if the estate is large enough to make it worth while to subdivide the inventory into the different kinds of property he may make a separate schedule of each of the asset schedules, to-wit: Forms 32b, Bank Balances; 32c, Stocks; 32d, Bonds; 32e, Accrued Receivables; 32f, Real Estate and Mortgages; and 32g, Miscellaneous. Many trust companies, like individual fiduciaries (see § 650), combine all the assets into two accounts, Cash and Investments.

The corpus credit schedules may be made up directly from the three credit columns of Form 32h, Administration Expense, Debts, and Legacies. In this way the entire accounting is made without trouble, without danger about proving at the end of the work, and without having to make an analysis of the events which took place at the beginning of the administration period, now passed from the memory of the executor. The corpus balance on hand as shown by the account of proceedings will be the same as the balance of the estate as shown on Form 32a. It therefore follows that if the bookkeeping during the administration period has been correct (and if a bank or trust company is the executor or administrator it almost certainly will be), the account is bound to be correct. With these forms used as outlined herein, any bookkeeper can make up the account without difficulty. The one thing which must receive careful attention in all fiduciary accounting is the analysis of the entries at the time they are originally made.

§ 696. Accounting for Income

Income and expenses against income are handled through Form 32j, at the top of which provision is made for showing the capacity in which the institution is acting, the names and addresses of beneficiaries, and the distributive shares and rates of income each is to receive. There is also provided a space for the method of remitting, such as by check once a

month, by cable, or otherwise. On the upper right-hand side is provided a place for the name of the trust or account, the amount of commission, the rate of commission, and when deductible.

The debits are payments either to beneficiaries or for expenses against and losses of income. Those debits which appear in the column headed Deductions are such as may be deducted from the income of the estate for federal income tax purposes, the law of which was kept in mind in the designing of the form.

The credit side of the sheet is separated into the various kinds of income. The analysis is likewise based on the federal income tax requirements, and is so planned as to facilitate the making up of the federal income tax returns. The form could, of course, have been drawn up so as to give a more detailed analysis, but such an increase in the number of columns required could very easily make the accounting system impracticable and unwieldy. It will be found that this form will take care of the great majority of cases very nicely.

In the preparation of the immediate and final accountings for income the executor charges himself with the credits from this sheet, and gives himself credit for the debits, as with any other system. (See § 636.)

§ 697. Other Records Kept

Form 32k, known as the "Personal Trust Department Record," is used for recording the facts about the estate and for noting the events that are to take place during the course of administration. In order to call attention at the proper time to those various items the doing of which is extremely important to the proper performance of the duties of an executor, a complete card index or tickler is a necessary part of the equipment of a trust department. The cards should be filed by dates so as to bring these matters before the person in

charge of the work in ample time, so that they may be taken care of in due course.

Review Questions

1. What is the advantage of having a separate set of books for each estate? Why is it not feasible for trust companies and banks? What is done to meet this situation?
2. What is the control sheet? What entries are made on the sheet? What is the first entry?
3. What is the purpose of the bank balance schedule? What goes into the credit column? What is the debit column and what goes into it?
4. What is the purpose of the stocks schedule? How is it arranged to accomplish this end? How are the entries made?
5. What is the purpose of the investments schedule? How are the entries made?
6. What is the object of the accrued receivables schedule? What is included in this class of assets?
7. What assets are recorded on the real estate and mortgage schedule? How will a bond and mortgage be entered? What details should appear on the record? How is the schedule used for real estate?
8. What is the miscellaneous schedule used for?
9. What assets are considered cash? What are the successive entries made to show a bank balance? If real estate were sold for cash, what would the entries be? What are the three debit columns for? What are the three credit columns for?
10. In making up the final account, what would be charged to the executor? Into what two accounts could this charge be divided? Into what six accounts? Which are the three credit schedules? What are the advantages of the procedure outlined? What is necessary to ensure correctness?
11. What is shown in the Cash Income account? What are the debit entries? What are the credit entries? How is the accounting for income prepared?
12. What is the purpose of the personal trust department record? What is a tickler and how is it used?

PART VII

FORMS

FORMS

Form 1. Last Will and Testament

I, Henry H. Beckwith of the City of New York, do hereby make, publish and declare this my last will and testament, hereby revoking all former wills by me made.

1. I give, devise and bequeath to my wife, Esther R. Beckwith, during her life, the use of my house, known as 91 West Seventy-second Street, in the City of New York, and the use of my garage in said city, all taxes and water rates and the cost of all necessary repairs on the said real estate to be paid by my said wife while she has the use of the same.

2. I give and bequeath to my said wife all my linen, bric-a-brac, works of art, household goods and furniture (useful and ornamental), china, plate, silverware, books, and pictures, and the motor cars and appurtenances thereto belonging that I may own at the time of my death.

3. I give and bequeath to my trustees, hereinafter mentioned, such sum, not less than two hundred thousand dollars ($200,000) nor more than three hundred thousand dollars ($300,000) as, in the opinion of my said trustees, shall be amply sufficient to produce an annual income of twelve thousand ($12,000) in trust, however, for the uses and purposes following:

(a) To apply, during the life of my said wife, the income thereof, to the extent of twelve thousand dollars ($12,000) per year, in equal quarterly payments to her use, and during the same period, to apply the income, if any, in excess of that sum to the use of my lineal descendants, in equal shares, *per stirpes*, and not *per capita*.

(b) Upon the death of my said wife, to dispose of the principal of the said trust fund as part of my residuary estate, in the manner directed by the tenth article of this will.

I declare that the provisions of this will for the benefit of my said wife are to be in lieu and bar of her dower and of all other right, share, or interest of, in, or to my estate.

4. I give and devise to my son, Henry H. Beckwith, Jr., that certain parcel of land on which is my summer home at Bristol, Massachusetts, known as Birch Lodge, together with all other buildings thereon and the contents thereof and the appurtenances thereto, and all my land in the town of Bristol aforesaid, to have and to hold the same to him, his heirs and assigns forever.

5. I give and bequeath to my said son all my jewelry, wearing apparel, personal ornaments and effects.

6. I give and bequeath to my trustees, hereinafter named, the following sums in trust, for the uses and purposes following:

(a) One hundred thousand dollars ($100,000) to apply the income thereof to the use of my brother, Rufus A. Beckwith, during his life.

(b) Fifty thousand dollars ($50,000) to apply the income thereof to the use of Maud Beckwith, wife of my said brother, Rufus A. Beckwith, during her life.

(c) Twenty thousand dollars ($20,000) to apply the income thereof to the use of my cousin, June Stimson, the widow of John Stimson, during her life.

7. Upon the death of each of the beneficiaries named in the sixth article, to dispose of the principal sum held for such beneficiary as part of my residuary estate, in the manner directed by the tenth article of this my will.

8. I give and bequeath to the corporations hereinafter named the sums designated:

To the Syrian Protestant College at Beirut, Syria, I give $10,000.

To Stevens Institute, Hoboken, New Jersey, I give $10,000.

To the Home for Incurables in the City of New York, I give $10,000.

To Hampton Institute, Virginia, I give $10,000.

9. I exonerate and discharge all legatees under this will from the payment of any indebtedness there may be owing to me by them at the time of my death.

10. All the rest, residue, and remainder of my property, both real and personal, of every kind and description whatsoever and wheresoever situated, I give, devise and bequeath to my trustees, hereinafter named, in trust, however, for the uses and purposes following:

(a) To divide the said property into as many equal shares as I shall leave children me surviving, and lineal descendants of deceased children, one share for each child, and one share for the lineal descendants of each deceased child, the names of all my children now living being Anne Beckwith Bays, Helen Beckwith Gardner, Mary Beckwith Cox, and Henry Beckwith, Jr.

(b) To convey, transfer and pay over to the lineal descendants of any child of mine, who shall not be living at the time of my death, the share set apart for such lineal descendants in equal shares, *per stirpes* and not *per capita.*

(c) To apply the income of each share, set apart for the benefit of any child of mine, to the use of such child until he shall attain the age of forty years, and thereupon to convey, transfer and pay over to the said child, one-half of the principal of the share set apart for the said child as aforesaid, and to apply the income of the remaining half of each such share to the use of the said child during his or her life, and upon the death of the said child, to convey, transfer and pay over the principal thereof in such manner to such person or persons as the said child shall direct by his last will and testament, or, in the absence of such direction, to such persons as shall then constitute the heirs at law of the said child, as in the case of the inheritance of real property, according to the laws of the State of New York.

11. I give to each of my cousins, Charles A. Barnes and Morton F. Barnes of Poughkeepsie, N. Y., an annuity of three thousand dollars ($3,000), to be paid semiannually to each during their respective lives, and I direct my executors and trustees to set apart, invest and hold in trust in separate funds, one for each annuitant, sufficient funds to produce by the clear net interest and income thereof the amount of annuities herein provided and to pay the same as herein provided. Upon the termination of each annuity the principal of the fund producing such annuity shall be paid to the Tuskegee Institute at Tuskegee, Alabama.

12. I direct my trustees to apply the income of all securities at any time held by them to the use of the beneficiary for whom they are held, irrespective of the price paid for them or of their market value at any time, it being my intention that no part of such income shall be applied as a sinking fund to offset the gradual loss of the premium or market value of any such securities.

13. I hereby give my executors and trustees acting under this will, full power and authority, in their discretion, to hold and retain any property coming to them under this will in the same form of investment as that in which it may exist at the time of my death, although it may not be of the character of investments now permitted by law to trustees. I also give to my said executors and trustees full power and authority in their discretion, to sell, lease, or exchange the whole or any part of such property, whether real or personal, and to invest and reinvest the proceeds in such amounts as they may see fit, in real estate in the State of New York or elsewhere, or in bonds of any state or government, within or without the United States, or in bonds, notes, or other obligations secured by mortgage on real estate within or without the State of New York, or in the stocks or bonds of such railroad or other companies in any part of the United States or Canada as, at the time of such investment, are in good credit and standing; or, with the written consent of the beneficiary, in corporate or other stocks or securities or other personal property of any kind or description, although the same may not be of the character permitted for trustees' investments by the ordinary rules of law.

14. I hereby authorize my executors and trustees to compromise and adjust any claim of whatever kind, which may be made against or in favor of my estate, upon such terms and in such manner as may to them, in their absolute and uncontrolled discretion, seem advisable.

15. If any bequests or directions of this will be ineffectual or invalid under the law of New York, I hereby give and bequeath to my wife, should she survive me, absolutely and without condition all my property and estate of whatever nature and wherever situated which for any reason may not be sufficiently disposed of by this will.

16. I appoint my son, Henry H. Beckwith, Jr., James Sandford of New York City, Walter Baldwin of Bristol, Massachusetts, and the Farmers Loan and Trust Company of the City of New York the executors of and trustees under this will. It is my wish, however, that my said son shall not act as trustee for the share set apart for his own benefit. I direct that no security be required of any of my executors or trustees in any jurisdiction where they may be called upon to act in the settlement of my estate.

In Witness Whereof, I have hereunto set my hand and seal this 7th day of May, 1920.

Henry H. Beckwith [seal]

The said will on four sheets, each signed by the testator, is signed, sealed, published and declared by Henry H. Beckwith, the testator, as and for his last will and testament, in the sight and presence of us, who in each other's sight and presence, and in the presence of the testator and at his request have hereunto subscribed our names as witnesses this 7th day of May, 1920.

Murray Cannes, 183 Mountain Ave., Montclair, N. J.
Silas M. Russell, 1145 Park Ave., New York City.
Elmer W. Marsh, 13 West 11th St., New York City.

The foregoing form has been compiled from some of the most important wills filed within the last years in the surro-

gate's office in New York City. These wills disposed of millions and were prepared by the best legal talent in that city.

Form 2. Analysis of Preceding Will

1. To Esther R. Beckwith, wife, use during her life of house, 91 West Seventy-second Street, New York City, and of garage in said city, subject to taxes, water rates and necessary repairs.

2. To Esther R. Beckwith, wife, all linen, bric-a-brac, works of art, household goods and furniture (useful and ornamental), china, plate, silverware, books and pictures, and motor cars and appurtenances thereto belonging.

3. (a) To Esther R. Beckwith, wife, use during her life, to extent of $3,000 quarterly, of income from such sum between $200,000 and $300,000 as in opinion of trustees will be amply sufficient to produce annual income of $12,000.

3. (a) To lineal descendants, equally *per stirpes,* use of remainder of income from above trust.

4. To Henry H. Beckwith, Jr., son, parcel of land on which is summer home at Bristol, Massachusetts, all buildings, contents thereof and appurtenances thereto, and all land in town of Bristol.

5. To Henry H. Beckwith, Jr., son, all jewelry, wearing apparel, personal ornaments and effects.

6. (a) To Rufus A. Beckwith, brother, income during his life from trust of $100,000.

6. (b) To Maud Beckwith, sister-in-law, income during her life from trust of $50,000.

6. (c) To June Stimson, cousin, income during her life from trust of $20,000.

8. (a) To Syrian Protestant College, Beirut, Syria, $10,000.

8. (b) To Stevens Institute, Hoboken, New Jersey, $10,000.

8. (c) To Home for Incurables, New York City, $10,000.

8. (d) To Hampton Institute, Virginia, $10,000.

9. To all legatees, release from payment of any indebtedness due deceased.

10. To Anne Beckwith Bays, Helen Beckwith Gardner, Mary Beckwith Cox, and Henry Beckwith, Jr., children, use of income from remainder until forty years of age; then one-half of principal of his or her share and use during life of income from other half, principal to be paid over as directed by will of each child or to child's heirs-at-law.

11. (a) To Charles A. Barnes, cousin, annuity of $3,000, to be paid semi-annually during life.

11. (b) To Morton F. Barnes, cousin, the same.

11. (c) To Tuskegee Institute, Tuskegee, Alabama, principals of two funds furnishing annuities to Charles A. Barnes and Morton F. Barnes, to be paid upon termination of each annuity.

15. To Esther R. Beckwith, wife, all property not otherwise disposed of. (Residuary legacy.)

SPECIAL STIPULATIONS

12. No amortization charged against life tenants.

13. Executors and trustees have power to continue any existing invest-

ment although of character not now permitted by law to trustees. May invest in real estate anywhere, or in bonds of any state or government (foreign included), or in bonds, notes or other paper secured by real estate mortgage anywhere, or in any stocks or bonds of companies in United States or Canada in good credit and standing, or (with written consent of beneficiary) in any property whatever.

14. Executors and trustees may compromise and adjust any claim in any way.

16. No security required from any executor or trustee in any jurisdiction.

Form 3. Will of Grover Cleveland

I, Grover Cleveland, of the Borough of Princeton, in the State of New Jersey, do make, publish, and declare this my last will and testament, hereby expressly revoking all previous wills by me made:

First—I hereby direct that after the payment of all my debts and funeral expenses an appropriate monument, with brief inscription and only moderately expensive, be erected at my grave and paid for out of my estate. I desire to be buried wherever I may reside at the time of my death, and that my body shall always remain where it shall be at first buried subject to its removal only if it shall be absolutely necessary in order that it shall repose by the side of my wife and in accordance with her desire.

Second—I give to my niece, Mary Hastings, daughter of my sister, Anna Hastings, the sum of $3,000, to be paid to her as soon as practicable after my death.

Third—I give to my friend, Richard Watson Gilder, the watch given to me in 1893 by the said Gilder and E. C. Benedict and J. J. Sinclair, and also the chain attached to the same when last worn by me.

Fourth—I give to each of the four daughters of my nephew, Richard Hastings, now or lately living with my sister, Anna Hastings, the sum of $2,000 each.

Fifth—I give to Frank S. Hastings, my good friend and executor of this will, as the most personal memento I can leave to him, the seal ring I have worn for many years, which was given to me by my dear wife, and with whose hearty concurrence this gift is made.

Sixth—I give to my two daughters, Esther and Marion, and to my two sons, Richard F. and Francis G., the sum of $10,000 each, to be paid to them, respectively, as they each shall arrive at the age of 21 years. Until these legacies are paid, or shall lapse, they shall be kept invested and the income derived therefrom shall be paid to my wife, and the aggregate of said income shall be applied by her to the support, maintenance, and education of said children in such manner and in such proportions as she shall deem best, without any liability to any of said children on account thereof. If, however, either of my said daughters shall before her legacy becomes payable cease for any reason to reside with her mother, then, and from that time, the income arising from the investment of her legacy shall be paid to said daughter. In case either of my said children shall die before his or her legacy shall be actually paid, leaving a child or children, then said legacy shall be paid to such child or children, but otherwise the said legacy shall lapse and become a part of the residuary estate disposed of by this instrument.

Seventh—All the rest and residue of my estate and property of which

I may die seized or possessed, of every kind and nature, and wheresoever the same may be situated, I give, devise, and bequeath to my dear wife, Frances F. Cleveland, and to her heirs and assigns forever, and I hereby appoint her guardian of all my children during their minority.

Eighth—I hereby appoint my wife, Frances F. Cleveland, executrix and Frank S. Hastings executor of this my last will and testament.

Witness my hand and seal at Princeton, New Jersey, this twenty-first day of February, one thousand nine hundred and six.

GROVER CLEVELAND.

The foregoing instrument was on the day it bears date signed by Grover Cleveland, the testator therein named, in the presence of each of us, and we both being present at the same time. And the said testator did then and there acknowledge and declare, to us and each of us, that said instrument was his last will and testament, and thereupon we did in the presence of each other and of said testator, and at his request, subscribe our names hereto as attesting witnesses.

ANDREW F. WEST, Princeton, N. J.
JOHN H. FINLEY, New York City, N. Y.

This will is singularly attractive because of the kindly, human feeling that it expresses, and the obvious desire to cause least trouble to those he leaves behind him. It is a model will in all respects.

Form 4. The Will of Edward Harriman

I, Edward H. Harriman, of Arden, in the State of New York, do make, publish, and declare this as and for my last will and testament, that is to say:

I give, devise, and bequeath all my property, real and personal, of every kind and nature, to my wife, Mary W. Harriman, to be hers, absolutely and forever, and I do hereby nominate and appoint the said Mary W. Harriman to be executrix of this will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this eighth day of June, in the year nineteen hundred and three.

EDWARD H. HARRIMAN [L. S.]

Signed, sealed, published, and declared by the testator as and for his last will and testament, in our presence, who, at his request, and in his presence, and in the presence of each other, have each of us hereunto subscribed our names as witnesses.

CHARLES A. PEABODY, 13 Park Avenue, New York.
C. C. TEGETHOFF, 291 East Seventeenth Street, Flatbush, L. I.

This can be used only in those cases where a man's wife is a capable business woman and understands and can carry

out their joint plans. Russell Sage's widow did a magnificent work with his immense fortune. Mark Hopkins' widow, instead, in her old age married a decorative artist employed on the property, and the Hopkins estate has become the Searles estate and he has passed it on to his own legatees.

Form 5. Codicil to a Will

I, Harold Lasker, of 672 Madison Avenue in the Borough of Manhattan, City, County, and State of New York, do hereby publish and declare this codicil to my last will and testament (executed February 17, 1920) in manner and form following:

Whereas in paragraph four of my said last will and testament, I did give and devise certain real property, consisting of one store and residence, combined, situated in Long Island City, New York, to my nephew Henry Lasker, I do now (in consequence of his death) revoke said gift and do hereby give and devise the said real property, as in such will described, to my niece Alma Lee Edwards, of Dobbs Ferry, New York, to her and her heirs forever.

In Witness Whereof, I have hereunto set my hand and seal this third day of May, in the year ninteeen hundred and twenty-one.

Harold Lasker [L. S.]

Signed, sealed, published, and declared by the testator as and for his last will and testament, in our presence, who at his request, and in his presence, and in the presence of each other, have each of us hereunto subscribed our names as witnesses, on the date aforesaid.

Charles A. Price, 13 Park Avenue, New York.
C. C. Scott, 291 East Seventh Street, Brooklyn, New York.

Form 6. Rules of Probate in Maine

RULES OF PROBATE

Governing Practice and Procedure in the
Courts of the State of Maine
Approved 1916

I

Any party may appear in the probate court, in person or by an attorney authorized to practice in the courts of this state, or by a person authorized by writing, filed in said court for that purpose. A person, other than an attorney, so appearing for another, or a person appearing for himself, shall file with the register a writing giving his name, residence, the matter in which, and the name of the person or persons for whom he appears. Such writing shall be placed on file, a corresponding entry shall be made on the docket and such person shall indorse his name

on the back of the petition, or other paper in the matter in which he appears.

II

If a party shall change his attorney pending any proceeding, the name of the new attorney shall be substituted on the docket for that of the former attorney and said party shall give notice thereof to the adverse party; and until such notice or change, all notices given to or by the attorney first appointed shall be considered in all respects as notice to or from his client, except in cases in which by law a notice is required to be given to the party personally; provided, however, that nothing in these rules shall be construed to prevent any party interested from appearing for himself, in the matter provided by law, and in such case the party so appearing shall be subject to the same rules that are or may be provided for attorneys in like cases, so far as the same are applicable.

III

When the authority of an attorney at law to appear for any party shall be demanded, if the authority shall declare that he has been duly authorized to appear by an application made directly to him by such party or by some person whom he believes to have been authorized to employ him, such declaration shall be deemed and taken to be evidence of authority to appear and prosecute or defend in any proceeding in said court.

IV

Petitions and other matters upon which notice has been ordered will not be acted upon until after the return hour, and any attorney or other duly authorized person who desires to appear to contest, or object to any matter in order for hearing, shall give notice to that effect on or before the opening hour of the session of the court at which such hearing is to be had.

V

Approved blanks will be furnished by the Register and must be used in all proceedings to which they are applicable.

VI

Notice will not be ordered on any petition, report, account or other instrument until the same has been actually filed in Court.

VII

The names of attorneys presenting petitions and other instruments in Court to be acted upon should be indorsed thereon to secure the prompt issuing of notices and for other purposes.

VIII

Petitions to sell real estate or personal property, or for allowances to widows or minor children will not be acted upon until the inventory in that estate has been duly filed in Court and approved.

IX

Petitions to sell real estate for the payment of debts, or legacies, except where the amount has been ascertained by the settlement of an

account or the report of Commissioners of insolvency, must be accompanied with a list under oath, of the debts (and legacies, if any) due from the estate, and the amount of the expenses of administration up to the time of the application.

X

No letter of appointment of a non-resident administrator, executor, trustee, guardian or conservator shall be issued until such officer has filed with the Register a written appointment of a resident agent or attorney.

XI

All petitions for assessment of inheritance taxes shall be filed in duplicate.

XII

Notice will be ordered on all petitions for the appointment of an administrator de bonis non or de bonis non with the will annexed, unless the appointment of a person entitled by law to administer the estate is requested, or the petition is assented to, to the satisfaction of the Court.

XIII

Representations of Insolvency should be accompanied with a statement, under oath, of the amount so far as can be ascertained, of the debts due from the estate, and of the amount of the appraisal of the real and personal property.

XIV

The Court may appoint a guardian ad litem, or require the appointment of a guardian for minors in cases in which they are interested, before administration is granted, account is settled, allowance made for the widow or license granted to sell real or personal estate, or in any matter pending wherein they may be interested.

XV

Accounts presented for order of notice must be fully stated before they are presented and notice ordered thereon.

XVI

Charges and fees of the Register shall be paid in advance. The Court may refuse to hear any cause or matter, or allow any account until such charges and fees have been paid.

XVII

When a surety company is offered as surety on Probate Bonds, a statement of the charge therefor must be filed in Court with the bond and with each renewal thereof. And no such bond shall be approved unless the name of the person executing the bond for the surety company has been certified to the Register by the insurance commissioner, or unless and until such surety company shall have filed with the Register a power of attorney or a certified copy thereof authorizing the execution of such bond. The Court may require proof in the form of an affidavit or otherwise, that the person purporting to be an officer of any surety company and executing in behalf of the company any bond, letter or power of attorney, is in fact such an officer.

XVIII

The signature of principals and sureties to all probate bonds should be written in full and witnessed.

XIX

Sureties on the bonds of administrators, executors, guardians, trustees or conservators, will not be appointed appraisers or commissioners on the same estate, nor will any person who is related to the administrator, executor, guardian, trustee, conservator or heirs at law within the sixth degree be appointed to either of said trusts. Christian names and residences of principals and sureties on bonds and of appraisers and commissioners should be fully stated.

XX

Any petition addressed to the Court may be amended in matter of form under the direction of the Court, with or without notice, when the rights of parties will not be affected.

XXI

All petitions for license to sell real estate shall contain an accurate description of the real estate to be sold, and the order of notice thereon shall contain a copy of such description and shall not be printed in the consolidated form.

XXII

All official communications relating to cases and business in court should be addressed to the Register of Probate to avoid delay.

XXIII

Parties not familiar with the proceedings in the Probate Court are expected to secure assistance of competent counsellors. Neither the Judge nor Register can advise in matters coming before the Court

XXIV

No person entitled by law to administer an estate shall be appointed within thirty days after the death of the decedent without consent of all other persons so entitled, other than creditors, who are resident in this State.

XXV

The Judges of Probate may order notices on all petitions and other matters presented to their several Courts.

XXVI

Letters testamentary or of administration with the will annexed and bonds in cases of noncupative or lost wills are to follow the general forms of letters testamentary and of administrations with the will annexed and bonds prescribed in other cases of testate estates.

XXVII

All depositions shall be opened and filed by the Register at the term for which they were taken; and if the matters in which they are to be

used shall be continued, such depositions shall remain on file and be open to all objections when offered at the trial or hearing as at the return term, and all depositions shall remain on file at least fourteen days; the party producing a deposition may then withdraw it by leave of Court, in which case it shall not be used by either party.

XXVIII

When written evidence is in the hands of an adverse party no evidence of its contents shall be admitted unless previous notice to produce it on trial or hearing shall have been given to such adverse party, or his attorney, and comments by counsel upon a refusal to produce it will not be allowed without first proving such notice.

XXIX

In cases of contested wills and accounts, on motion of the proponent or accountant, the party objecting may be required to file specifications of the grounds of the objection before the day of hearing, but amendments thereto may be filed by leave of the court, upon such terms as may be deemed reasonable, but not without granting a continuance, if requested by the proponent or accountant, and in such cases the hearing shall be confined to the grounds of objection specified.

XXX

In cases of license to sell real estate at private sale or to exchange real estate, a certificate, under oath, of such sale or exchange should be filed in the Registry of Probate within thirty days, showing the amount received or the real estate taken in exchange, and the person to whom sold or with whom exchanged.

XXXI

No private claim on an administrator, executor, trustee, guardian of an adult or conservator of an estate shall be allowed in his account unless particularly stated in writing, and notice of such claim included in the notice on said account.

XXXII

Wills must in every case be proved and allowed in open court and in term time, and in case the testimony of the witness or witnesses proving the will is not taken down by the court stenographer and certified, the testimony shall be preserved by an affidavit taken before the Judge or Register, and filed with the other papers in the case.

XXXIII

All personal surety bonds, when presented for approval, should bear on the back thereof a certificate of a justice of the peace or notary public of the following tenor.

> I hereby certify that I have made due inquiry into the financial standing of the sureties on the within bond, and find them to be jointly worth, above their liabilities, the sum of $..... I therefore recommend the acceptance and approval of the within bond.
>
> .....
>
> *Justice of the Peace*
>
> .....
>
> *Notary Public*

XXXIV

When letters testamentary or of administration are granted without bond, the Judge may direct that letters shall not issue from the probate office and in such cases no certificate of appointment shall issue until twenty days shall have elapsed after date of the decree.

XXXV

When claims are filed in the probate office verified as required by law, the Register shall forthwith give notice of such filing by mail to the administrator or executor of the estate.

XXXVI

Petitions for administration filed for notice and petitions for probate of wills shall contain the addresses of the widow or widower and of the heirs at law and next of kin of deceased so far as known to the petitioner, and the Register shall give notice, by mail, of the filing of said petition to all persons whose addresses are so given, at least seven days before the return day.

XXXVII

Letters of administration and letters testamentary shall be accompanied with a warrant to appraisers and shall not issue until appraisers are appointed. The warrant need not be recorded until returned, but the fact of issue shall be entered on the docket.

XXXVIII

All petitions by foreign administrators, executors, guardians, conservators or trustees, for license to collect or receive personal property, and all petitions by foreign administrators, executors, guardians or conservators to sell real estate shall be filed in the Registry of Probate in duplicate and the Register shall forward to the attorney general one copy by mail seven days at least before the return day.

XXXIX

The petition for the reduction of the penal sum of any bond signed by a surety company as surety will not be granted until the principal on such bond has filed and settled his account in court.

XL

Service of all petitions filed in the Probate Court by a husband or wife, for desertion, under the provisions of Chap. 328 of the public laws of 1915, shall be by a copy of the petition and order of court thereon, fourteen days at least before the same is returnable. If the residence of the party is known or can be ascertained, actual notice shall be obtained; otherwise notice shall be given in such manner and by such means as the Court may order.

XLI

Rule days in equity proceedings in the Probate Court shall be the first day of each term of the Probate Court, as held in the different counties in the State.

XLII

The equity rules of the Supreme Judicial Court of the State shall be the rules for equity proceedings in the Probate Courts, so far as the same are applicable thereto.

XLIII

Causes in equity shall be begun by bill or petition filed in the Register's office, upon which subpœna shall issue as a matter of course, returnable on a rule day of the Probate Court of the county in which the bill or petition is filed, held within sixty days after the filing of such bill or petition. In all cases service shall be made by a copy of subpœna and bill or petition attested by the Register. The Court may order such further or other notice as the Judge considers necessary.

Form 7. Declaration or Deed of Trust

This declaration of trust executed this 23rd day of December, 1920, between Morgan A. Ryan of East Orange, New Jersey, grantor, and the Union Trust Company of Newark, New Jersey, a corporation duly organized under the laws of New Jersey, trustee:

WITNESSETH, that said grantor in consideration of one dollar in hand paid, the receipt whereof is hereby acknowledged, does hereby assign, transfer and set over to said trustee, its successors and assigns all and singular the following described stocks and bonds:

(Insert descriptive inventory)

To have and to hold the said described property to said trustee, its successors and assigns

In trust for the following uses and purposes:

1. To hold, control and manage the said property, to invest and reinvest the same and to collect and to receive the issues, income, interest, dividends and profits thereof, and after paying all proper charges and expenses including the legal fees allowed trustees under the laws of the state, to pay over said net income in quarterly payments to the following persons:

To Janet B. Ryan, the wife of the grantor, one-fourth of the total of said net income during the term of her life.

To Margaret E. Ryan, daughter of grantor, or her heirs, during the life of her mother, one-fourth of the said net income.

To the grantor one-half of said net income during his life.

2. Upon the death of the said Janet B. Ryan, the one-half in value of the entire amount of said property shall be assigned, transferred and delivered by said trustee to grantor's daughter, Margaret E. Ryan, or to her heirs if she should not then be living.

3. Upon the death of grantor one-half of the value of the entire amount of said property shall be assigned, transferred and delivered to grantor's son, Roy C. Ryan of Brooklyn, New York, or his heirs.

4. The trustee shall receive such compensation for its services as is prescribed by the statute law of New Jersey for executors or trustees for like services.

5. The trustee accepts the trust hereby declared and acknowledges receipt of the stocks and bonds herein scheduled subject to the trusts as herein declared and set forth.

(The customary individual and corporate attestation and notarial acknowledgment.)

The foregoing is rendered in the simplest form to illustrate the principles involved. In an actual transaction the trustee, if a banking corporation, would want provisions giving it a certain latitude in selling and reinvesting and releasing it from liability for losses not caused by its default or neglect. Competent legal assistance is necessary to draw up any instrument creating a trust. Any amateur work in this direction will prove costly later.

Form 8. Petition for Probate

STATE OF MAINE

To the Honorable, the Judge of the Probate Court in and for the County of.....*Kennebec*.....

RESPECTFULLY REPRESENTS .....

.....

.....*Henry J. Stimson*.....

.....

of.....*Waterville*....., in said County, ...*and*.....that.....*the said Henry J. Stimson*.....who last dwelt in.....*Waterville*.....in said County,.....died on the...*fourteenth*...day of....*April*....A. D. 1921.., testate, possessed of estate remaining to be administered, leaving ....*a widow*...., whose name is....*Anne L. Stimson*....and as....*his* ....only heirs-at-law, and next of kin, the persons whose names, residences and relationship to the deceased are as follows, viz:

Names	Residence	Relationship
.....	.....	.....
..*Henry J. Stimson, Jr.*.	...*Oakland, Maine*.....	.....*Son* .....
..*Mary S. Cope*.....	...*Waterville, Maine*...	.....*Daughter* .....
..*Jane E. Stimson*.....	....*Waterville, Maine*...	.....*Daughter* .....
.....	.....	.....

That your petitioner.....is.....

.....*Charles M. Curry*.....

the executor....named in the Will of said deceased..*Henry J. Stimson*...

Wherefore....*he*....prays....that said Will....*of Henry J. Stimson*....which is....herewith presented, may be proved and allowed, and that Letters Testamentary issue to....*Charles M. Curry*....named therein.

Your petitioner....further prays that such Letters may be issued to said Executor....without giving bond, in accordance with the request of said testator....as expressed in said instrument.

Dated this....*twenty-sixth*....day of....*April*,....A. D. 1921..

.....

.....*Charles M. Curry*.....

STATE OF MAINE

Knox, ss.
Subscribed and sworn to this....*twenty-sixth*....day of....*April*....
A. D. 19*21*..
Before me,.....*James R. Newhall*.....Notary Public.
Justice of the Peace.

Form 9. Order for Issuance of Citations in Foreign Jurisdictions

At Chambers of the Surrogates' Court held in and for the County of New York, at the Hall of Records, in the County of New York, on the.....*21st*..... day of....*June*....in the year nineteen hundred and *twenty-one*.

PRESENT,

HONORABLE *Justice Blank*, SURROGATE.

In the Matter of Proving the Last Will and Testament of *John Smith* Deceased,
As a Will of Real and Personal Property.

Upon filing the verified petition of.....*Henry Smith*..... executor named in the last will and testament of.....*John Smith*..... late of.....*the County of New York*.....deceased, by which the petitioner has made proof to my satisfaction that..... the persons hereinafter named are heirs and next of kin of said....*John Smith*.....deceased, and are....*not*....residents of this state and that personal service of the citation herein cannot with due diligence be made upon.....*them*.....within the state ;

Now, on motion of.....*Thomas White*.....attorney for the said petitioner.....*Henry Smith*.....

ORDERED: that the service of the citation in the above-entitled matter upon the persons hereinafter named be made by publication thereof in two newspapers, to wit, in the New York Law Journal and in the *New York Times*, both published in the County of New York, once a week for four successive weeks; or, at the option of the petitioner, by delivering to and leaving with each of the persons hereinafter named in person a true copy of the citation without the state.

AND IT IS FURTHER ORDERED AND DIRECTED, that on or before the day of the first publication, the petitioner deposit in the post office at the County of New York, a copy of the citation, contained in a securely closed post-paid wrapper directed to each of the following persons respectively, at the places designated below:

John Smith, Jr.	*1664 Park Ave., Los Angeles, Cal.*
Alice Smith	*1664 Park Ave., Los Angeles, Cal.*
Helen Edwards	*124 Fifth Street, Columbus, Ohio*
Robert Storm	*648 Madison St., Toledo, Ohio*
Gertrude Storm	*648 Madison St., Toledo, Ohio*

Form 10. Order for Citation Within Jurisdiction

THE PEOPLE OF THE STATE OF NEW YORK,

BY THE GRACE OF GOD, FREE AND INDEPENDENT,

To

John Smith, Jr., Alice Smith, Helen Edwards, Robert Storm, and Gertrude Storm

the.....*sole*.. ..heirs and next of kin of.....*John Smith*.....deceased, SEND GREETING:

WHEREAS,.....*Henry Smith*.. ..who resides at.....*435 West Second Street*....., the City of New York, has lately applied to the Surrogates' Court of our County of New York, to have a certain instrument in writing, relating to both real and personal property, duly proved as the last will and testament of.....*John Smith, deceased*,.....who was at the time of his....death a resident of.....*the city and*.....County of New York.

THEREFORE, you and each of you are cited to show cause before the Surrogates' Court of our County of New York, at the Hall of Records, in the County of New York, on the.....*5th*.....day of.....*July*..... one thousand nine hundred and *twenty-one* at half-past ten o'clock in the forenoon of that day, why the said will and testament should not be admitted to probate as a will of real and personal property.

IN TESTIMONY WHEREOF, we have caused the seal of the Surrogates' Court of the said County of New York to be hereunto affixed.

WITNESS, Honorable.....*Justice Blank*..... a Surrogate of our said County of New York, at said County, the.....*twenty-first*.....day of.....*June*,..... in the year of our Lord one thousand nine hundred and *twenty-one*.

[L. S.]

Robert Wood, Clerk of the Surrogates' Court.

NOTE—The original citation must be returned to the Probate Clerk before one o'clock P. M. on the day preceding the return day, with sworn proof of service.

Form 11. Waiver of Citation

SURROGATES' COURT,
COUNTY OF NEW YORK.

In the Matter of Proving the Last Will and Testament of .....*John Smith*..... Deceased, As a Will of Real and Personal Property	WAIVER OF CITATION.

I, ...*Samuel Smith*.....
.....
.....
the undersigned, ...an heir of and next of kin of .....*John Smith*....., deceased, do hereby.....appear in person and waive the issue and service of a citation in the matter of proving the last will and testament of said deceased, bearing date...*May 15, 1921*.

Dated.....*October*..... } .....*Samuel Smith*.....
.....*1*....., 1921. }

Signed in the presence of
.....

State of.....*New York*..... } *ss.:*
County of.....*New York*..... }

BE IT KNOWN, that on the.....*1st*.....day of.....*October*....., one thousand nine hundred and.....*twenty-one*.....before me.....*James Orr*....a....*Notary Public*....in and for the State of....*New York*...., duly commissioned and sworn, residing in the....*Borough of Manhattan* personally came and appeared....*Samuel Smith*.....*of the City, County and State of New York*..... to me personally known, and known to me to be the same person described in and who executed the above waiver and.....*he*....duly.... acknowledged that....*he*....executed the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal of office, the day and year last above written.

.....*James Orr, Notary Public*.....
.....*N. Y. Co. No. 16789*.....
.....*Comm. Expires Oct. 1, 1922*.....

Form 12. Letters Testamentary

THE PEOPLE OF THE STATE OF NEW YORK,

BY THE GRACE OF GOD FREE AND INDEPENDENT,
TO ALL TO WHOM THESE PRESENTS SHALL COME OR WHOM THEY MAY CONCERN.

SEND GREETING:

KNOW YE, That at the County of New York, on the.....*fifth*..... day of.....*May*....., in the year of our Lord one thousand nine hundred and.....*twenty-one*....., before HONORABLE.....*J. P. Cohalan*..... a Surrogate of our said county, the LAST WILL AND TESTAMENT of..... .....*James H. Chester*..... deceased, was proved, and is now approved and allowed by us; and the said deceased.....*James H. Chester*,.....having been at the time of .....*his*.....death a resident of the County of New York, by means whereof the proving and registering said will and the granting administration of all and singular the goods, chattels and credits of the said testat*or* and also the auditing, allowing and final discharging the account thereof doth belong unto us, the administration of all and singular goods, chattels and credits of the said deceased in any way concerning....*his*.... will, is granted unto.....*Charles A. Brown*..... execut*or* in the said will named,.....*he*.....being first duly sworn, well, faithfully and honestly to discharge the duties of such execut*or*.

IN TESTIMONY WHEREOF, we have caused the seal of office of the Surrogate's Court of the County of New York to be hereunto affixed.

WITNESS, HONORABLE.....*J. P. Cohalan*....., a Surrogate of our said County of New York at said

SEAL

county the.....*twentieth*.....day of.....*May*....., in the year of our Lord one thousand nine hundred and *twenty-one*.

.....*H. R. Price*.....
Clerk of the Surrogate's Court.

Letters of administration are so nearly like the above, that they have not been included herein.

Form 13. Oath of Executor

SURROGATES' COURT,
COUNTY OF NEW YORK,

In the Matter of Proving the Last Will and Testament of .....*John Jones*..... Deceased, As a Will of Real and Personal Property.	OATH OF EXECUTOR. This oath may be taken before a Notary Public or a Commissioner of Deeds.

COUNTY AND STATE OF NEW YORK, ss.:

I, ...*Richard Brown*.....*of the County of New York*..... executor....named in the last will and testament of.....*John Jones*..... late of....*the City and*.....County of New York, deceased, do depose and say that I am a resident of No.....*1010 West 13th Street*..... in the Borough of.....*Manhattan*.....in the City and State of New York; that I am a citizen of the United States and am over twenty-one years of age, and that I will well, faithfully and honestly discharge the duties of executor....of said last will and testament.

.....*Richard Brown*.....

Sworn to this.....*10th*.....day of.....*September*.....1921

.....*James Orr, Notary Public*.....
N. Y. Co. No. 16789.
Comm. Expires, Oct. 1, 1922.

Form 14. Renunciation

The form for renunciation of the office of executor differs, of course, where the statutes vary, but the form generally used will run about as follows:

.....COURT

(*Title*)

I, (*Name of Executor*) of (*Name of City or Town*) of the State of (*Name of State*), Executor(*trix*) appointed in and by the last will and testament of (*Name of Testator*), late of the (*City or Town*) of (*Name*), County of (*Name*), deceased; do hereby renounce said appoint-

ment and all right and claim to letters testamentary of and under said last will and testament, or to act as Executor(*trix*) thereof.

Dated this.....day of....., 19...

.....

(Person renouncing signs here.)

Attest:

(Notarial acknowledgment in usual form.)

Form 15. Petition for Revocation of Letters

SURROGATE'S COURT,
COUNTY OF.....

(*Title*)

To the Surrogate's Court of the County of.....

The petition of.....respectfully shows:—

I. That your petitioner resides in.....and is..... *(Describe petitioner as required by the law; either as creditor or person interested. If the latter, state character of interest, such as legatee, next of kin, etc.)*
of.....late of.....deceased *(Here specify whether decedent died testate or intestate; if testate, allege probate of the will and liber of record, and the issuance of letters testamentary; if intestate, allege that fact and issuance of letters of administration.)*

II. *(Here state the grounds for asking the revocation of letters testamentary or of administration. As for example:)*

That at the time the aforesaid letters were issued to the said..... he was incompetent or disqualified by law to act as such, and the objection was not taken by your petitioner *(or by any person whom he represents)* upon the hearing of the application for letters, and that the facts by reason of which he was incompetent or disqualified by law to act as such executor or administrator were *(Here allege facts.)* *(If the ground for revocation is any of the other grounds specified by the law, make the allegation primarily and substantially in the language of the law, and then add the specific facts, concisely stated, constituting the alleged disqualification or ground for revocation of letters.)*

WHEREFORE, your petitioner prays for a decree revoking the said letters testamentary *(or of administration)* and that the said..... executor *(or administrator)* may be cited to show cause why a decree should not be made accordingly. *(It is proper to pray in a necessary case for an order temporarily restraining the representative from acting in the meantime.)*

(Signature)

(Verification)

Form 16. Form of Bond of Executor or Administrator

KNOW ALL MEN BY THESE PRESENTS, That I,.....
.....*Henry Smith,*.....*of the City, County*
.....*and State of New York,*.....

am held and firmly bound unto The People of the State of New York in the sum of.....*Twenty Thousand*.....Dollars, lawful money of the United States of America, to be paid to the said people; to which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals.

Dated the.....*6th*.....day of.....*July*.....one thousand nine hundred and *twenty-one*.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden.....*executor*,.....*Henry Smith*..... shall faithfully execute the trust reposed in ....*him*....as executor of the last will and testament of.....*John Smith*.....deceased, and obey all lawful decrees and orders of the Surrogates' Court of the County of New York touching the administration of the estate committed to .....*his care*.....then this obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

.....*Russell Knox*.....[L. S.]
.....*James Tompkins*.....[L. S.]
.....[L. S.]
.....[L. S.]

I know the within-named sureties to be the identical persons that they represent themselves to be, and to be responsible parties, and I believe them to be worth at least $....*10,000*....each in good property.

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.:

.....*Russell Knox*.....being duly sworn, deposes and says that he is one of the sureties named in the annexed recognizance; that he resides at No.....*648 Pine*.....Street in the.....*Borough of Manhattan*.....that he is a....*land*....holder, and that he owns the following property, consisting of.....*two houses, and two and one-half acres of land, at Nos. 10, 12, and 14, Terrace Way, Garden City, L. I.*,..... and that the same is of the value of not less than...*Fifteen Thousand*... Dollars and is subject to no incumbrance except a mortgage of....*Three Thousand Dollars*.....and that there are no unsatisfied judgments or

executions against him, and that he is under no recognizance, nor is he upon any bond, undertaking or written obligation whatever.

.....

and that he is worth in good property, exclusive of property exempt by law from levy and sale under an execution, not less than.....*Twelve Thousand*.....Dollars over and above all debts, liabilities and lawful claims against him, and all liens, incumbrances and lawful claims upon his property.

Sworn to before me, this....*8th*....day of.....*July*.....1921, } ....*Russell Knox*.....Surety.
.....*James Orr, N. P.*.....

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.:

.....*James Tompkins*.....being duly sworn, deposes and says that he is one of the sureties named in the annexed recognizance; that he resides at No.....*912 Madison Ave*.....in the....*Borough of Manhattan* that he is a....*land*....holder, and that he owns the following property, consisting of....*one building of twelve stories, at 708 Vesey Street, New York City*,.....and that the same is of the value of not less than .....*$100,000*.....Dollars, and is subject to no incumbrance except a mortgage of.....and that there are no unsatisfied judgments or executions against him, and that he is under no recognizance, nor is he upon any bond, undertaking or written obligation whatever.

.....

and that he is worth in good property, exclusive of property exempt by law from levy and sale under an execution, not less than....*One Hundred Thousand*.....Dollars over and above all debts, liabilities and lawful claims against him, and all liens, incumbrances and lawful claims upon his property.

Sworn to before me, this....*8th*....day of.....*July*.....1921, } .*James Tompkins*.....Surety.
.....*James Orr, N. P.*.....

COUNTY OF NEW YORK, ss.:

On this.....*8th*.....day of.....*July*.....1921, before me came .....*Russell Knox and James Tompkins*,.....

.....

to me known to be the individuals described in and who executed the within bond*s*, and acknowledged that they executed the same.

.....*James Orr, Notary Public*.....
N. Y. Co. No. 16789.
Comm. Expires, Oct. 1, 1922.

Form 17. Inventory

STATE OF MAINE

KNOX, ss. .....
To..... PROBATE COURT.

.....

.....in said County,.....disinterested person ,
GREETING.

You are appointed to appraise, on oath, according to the value thereof at the date of death of deceased, the Real Estate, Goods and Chattels,

Rights and Credits, which are by law to be administered, of which .....late of.....in said County of Knox, died seized or possessed, in said County,..... or any other County within the State,..... to be shown you by the Administrat.....Execut..... Trustee of the Estate Will.....of said deceased.

When you have performed that service you will deliver this Warrant, with your doings in pursuance thereof to the Administrat..... Execut.....Trustee of said Estate Will.....who is to return the same into Probate Court within three months from the date thereof.

Witness, OSCAR H. EMERY, Esquire, Judge.....of said Court at.....this.....day of.....in the year of our Lord one thousand nine hundred and.....

.....Register.

KNOX, ss. .....A. D. 19....

The above named.....personally appeared before me, and made oath that.....would faithfully and impartially perform the duty required by the foregoing Warrant.

.....Justice of the Peace.
Notary Public.

Pursuant to the foregoing Warrant,.....have appraised said estate as follows, to wit:

Real Estate, - - - - - - -	$.....
Goods and Chattels, - - - - -	$.....
Rights and Credits, - - - - -	$.....
Total,	$.....

Amount which in.....judgment may be realized from said rights and credits, exclusive of expenses and risks of collection, $.....

.....
.....
.....} Appraisers.

.....Adm.
Exr.

STATE OF MAINE

KNOX, ss. .....A. D. 19....

Then personally appeared.....of said estate,.....and made oath that the following Schedules contain a true Inventory of all the estate of said.....that has come to..... possession or knowledge.

.....Justice of the Peace.
Notary Public.

PROBATE COURT.

KNOX, ss. .....A. D. 19....

Ordered that the foregoing Warrant and return thereon, and the Inventory or Schedules following be accepted and filed.

.....Judge of Probate.

SCHEDULE OF REAL-PERSONAL-ESTATE.

Form 18. Notice of Appointment of Appraisers

To all persons interested in the estate of....., late of the City (or Town) of....., County of....., State of....., deceased:

Notice is hereby given that the undersigned, as the Executor (or Administrator) of the estate of said deceased, with the aid of the appraisers appointed by the Surrogate of said County, will on the..... day of....., 19...., at.....o'clock in the.....noon at the late residence of the said deceased, in said City (or Town), proceed to make an appraisement and inventory of all the goods, chattels, and credits of said deceased, according to law.

Dated this.....day of....., 19.....

.....
(Signed by Executor or Administrator)

Where the law of the state requires it, the above is a suggested form for the giving of notice to all concerned in the estate of the deceased, by the executor or administrator of the estate, that appraisers have been appointed by the court.

Form 19. Lawyer's Memoranda for Preparation of a Will *

I, ..., am a legal resident of the County of..... and State of.....

DISPOSITION OF PERSONAL EFFECTS

I desire to give all my personal effects, such as works of art, jewelry, silverware, library, clothing, etc., to the following persons:

	Relationship if any	Description of articles
Name Street Address City and State *(Repeat for each separate bequest.)*		

* Adopted from an effective form used by the Bankers Trust Company of New York City.

Disposition of Cash and Securities

I desire to give cash and securities outright to the following persons or institutions:

	Relationship if any	Description of articles
Name Street Address City and State *(Repeat for each separate bequest.)*		

Disposition of Real Estate

I desire to devise my real estate to the following persons:
(If you wish your wife or other relative to have only the use, for life, of your residence or other real estate, please so indicate.)

	Relationship if any	Description of articles
Name Street Address City and State *(Repeat for each separate devise.)*		

Trusts To Be Established

I desire to establish the following trusts:

1. Name and address of person to whom income is payable	2. Relationship if any	3. Amount of principal	4. How do you wish income paid?
Name Street Address City and State			Semiannually Quarterly
5. How long do you wish the trust to run?	6. Upon expiration of trust principal is to be paid to the following person		7. Relationship if any
For life Or until age of..... *(Repeat form for each trust.)*	Name Street Address City and State		

An Answer to the Following Questions Will Aid Your Attorney in Drawing Your Will

1. Is provision made for wife in lieu of dower?
2. Are legacies to be paid without deduction for inheritance taxes?
3. Specify whether legacies are to be paid in cash or in securities.
4. Is your executor or trustee to have full power to mortgage, lease, or exchange any and all real estate?
5. Is your trustee authorized to retain as part of trust estate any securities you own?
6. Is your trustee to be restricted to investments authorized by your state?
7. If he is not to be restricted, what class of securities is he to purchase?
8. Is your trustee to be authorized to pay all stock dividends and unusual dividends to the life beneficiary?
9. If securities are purchased at a premium, is your trustee required to set aside income to absorb the premium?
10. Name your executor (and trustee, if any).

Form 20. Appointment of Bank as Transfer Agent

(To be modified as required by circumstances.)

APPOINTMENT OF

BLANK NATIONAL BANK (OR TRUST COMPANY)

AS STOCK TRANSFER AGENT

WE HEREBY CERTIFY TO Blank National Bank (or Trust Company) that at a regularly convened meeting of the Board of Directors of....*the Richards & Roe*....Corporation, held on the...*4th*...day of....*June*...., 1921, the following resolutions were duly adopted:

RESOLVED, That Blank National Bank (or Trust Company) be and it hereby is appointed Transfer Agent to record upon the books of this Corporation the issue and transfer of its capital stock and to countersign certificates for all stock hereafter issued or transferred.

That said National Bank (or Trust Company) is hereby authorized as such Transfer Agent:

(1) to open and keep such transfer book or books as may be required by law or for its own convenience;

(2) to countersign certificates of stock in such names and for such number of shares as may be certified to it by the proper officers of this Corporation upon any original issue; and after such certificates have been countersigned also by the Registrar of this Corporation to deliver the same upon the written order of the....*President*....of this Corporation;

(3) to countersign certificates of stock for shares equal to the number of shares represented by certificates of stock surrendered for transfer and cancelled and when said new certificates have been countersigned also by the Registrar of this Corporation, to deliver the same to the persons presenting the surrendered certificates for transfer;

(4) to countersign any certificate of stock certified to be issued in lieu of a lost or destroyed certificate of stock and to deliver the

same upon the written order of the.....*President*.....of this Corporation;

FURTHER RESOLVED, that said National Bank (or Trust Company) as such Transfer Agent may rely on the certificate of the President or a Vice-President and Secretary or an Assistant Secretary of this Corporation with respect to any matters relating to its duties as Transfer Agent; that it shall not be the duty of said National Bank (or Trust Company) to examine into the facts stated in any such certificate and that in acting in respect to certificates of stock believed by said National Bank (or Trust Company) to have been signed by officers of this Corporation authorized to sign the same and sealed with the corporate seal, this Corporation will hold said National Bank (or Trust Company) harmless against all liability.

FURTHER RESOLVED, that said National Bank (or Trust Company) may at any time withdraw from its appointment as Transfer Agent by giving thirty days notice in writing to this Corporation and by refunding such proportion of the compensation paid to it for acting as such Transfer Agent as shall not have been earned at the time such withdrawal becomes effective.

FURTHER RESOLVED, that said National Bank (or Trust Company) may apply to.....*R. J. Smith*.....of.....*New York*..... counsel for this Corporation or to its own counsel for advice with respect to any question relating to its duties as such Transfer Agent and this Corporation hereby undertakes to hold said National Bank (or Trust Company) harmless against all claims by whomsoever made on account of any act done in good faith in connection with said agency or of any failure to act, whether on advice of counsel or not, and agrees that said National Bank shall be liable only for its wilful default or gross negligence.

FURTHER RESOLVED, that the proper officers of this Corporation be and they hereby are directed and empowered to do any and all things necessary or desirable to effectuate the purposes of these resolutions, and in particular:

(1) to certify these resolutions and lodge them with said National Bank (or Trust Company);

(2) to keep said National Bank (or Trust Company) at all times supplied, as requested by it, with certificate of stock duly signed and sealed;

(3) to certify to said National Bank (or Trust Company) the facts with respect to any new issue of stock;

(4) to certify to said National Bank (or Trust Company) all acts and documents with respect to this Corporation which said National Bank may require and especially the facts respecting the issue of its outstanding stock and regarding any certificate proposed to be issued in lieu of a lost or destroyed certificate.

WE FURTHER CERTIFY:

(1) That.....*Browne & Greene*.....Company is the duly appointed and acting Registrar for the Stock of this Corporation;

(2) That this Corporation was chartered under the laws of the State of.....*New York*.....in the month of.....*May*....., 1919;

(3) That total authorized capital stock of this Corporation is: .....*Two Thousand*.....* shares of PREFERRED stock of the par

* Write out numbers.

value of.....*One Hundred*.....dollars each, and.....*Three Thousand*....shares of COMMON stock of the par value of....*One Hundred*.... dollars each, making the total par value of its authorized capital stock .....*Five Hundred Thousand*.....dollars;

(4) That this Corporation has issued and outstanding at the present time:

.....*Fifteen Hundred*.....shares of PREFERRED stock and.....*Three Thousand*.....shares of COMMON stock, making the total par value of the stock now issued and outstanding.....*Four Hundred and Fifty Thousand*.....dollars;

(5) That the money or property for which the above mentioned shares were issued has been actually paid or conveyed, transferred and delivered to this Corporation;

(6) That the officers of this Corporation authorized to sign certificates of stock are the President or Vice-President and.....*Treasurer*.....or Assistant....*Treasurer*...., and no other officers have ever been authorized to execute certificates of stock;

That at the present time said officers are as follows:

President,	Mr.....*John Richards*.....
Vice-President,	Mr.....*R. J. Smith*.....
Treasurer,	Mr.....*Adam Roe*.....
Assistant *Treas.*	Mr.....*Ralph Hay*.....

WE FURTHER CERTIFY that we are delivering to you herewith the following, each identified by the autograph signature of the Secretary of this Corporation, viz:

(1) A copy of the charter or certificate of incorporation of this Corporation with all amendments, certified by the Secretary of State or other proper officer of the state in which this Corporation is incorporated;
(2) A true copy of the by-laws of this Corporation with all amendments;
(3) Specimen copies of all certificates of stock of this Corporation;
(4) Card or cards containing the names and genuine autograph signatures of the officers now authorized to sign certificates of stock of this Corporation;
(5) Card or cards containing the names and genuine autograph signatures of all former officers of this Corporation authorized to sign certificates of stock now outstanding and the offices filled by them respectively, together with the terms of their incumbency;
(6) Card or cards containing the genuine autograph signature of the Registrar of this Corporation authorized for use in countersigning certificates of stock of this Corporation.

IN WITNESS WHEREOF, we have signed these presents as President and as Secretary of this Corporation and have hereunto affixed the seal of this Corporation, the....*9th*....day of.....*June*....., 1921.

.....*John Richards*.....
President.

(Corporate Seal)

.....*James Street*.....
Secretary

Address of Corporation....*1491 John Street, New York City*.... ....

Form 21. Appointment of Bank as Registrar

(To be modified as required by circumstances.)

APPOINTMENT OF

BLANK NATIONAL BANK (OR TRUST COMPANY)

AS REGISTRAR OF STOCK

WE HEREBY CERTIFY TO Blank National Bank (or Trust Company) that at a regularly convened meeting of the Board of Directors of....*the Richards & Roe*....Corporation, held on the...*4th*...day of....*June*...., *1921*, the following resolutions were duly adopted:

RESOLVED, that Blank National Bank (or Trust Company) be and it hereby is appointed Registrar to countersign all certificates of stock of this Corporation hereafter issued or transferred and to register the issue and transfer thereof.

That said National Bank (or Trust Company) is hereby authorized as such Registrar:

(1) to open and keep such book of registration as may suit its convenience;

(2) to countersign and register certificates of stock for not to exceed the number of shares certified to it as the amount of any original issue;

(3) to register the transfer of stock of this Corporation and, when certificates of stock duly cancelled are presented for inspection by the Transfer Agent of this Corporation, to countersign as Registrar new certificates of stock for an equal number of shares;

(4) to register and countersign any certificate of stock certified to it to be issued in lieu of a lost or destroyed certificate;

(5) to return all certificates registered and countersigned by it to said Transfer Agent together with any cancelled certificates.

FURTHER RESOLVED, that said National Bank (or Trust Company) may rely upon the certificate of the President or a Vice-President and Secretary or an Assistant Secretary of this Corporation with respect to any matter relating to its duties as Registrar; that it shall not be the duty of said National Bank (or Trust Company) to examine into any issue or transfer of stock, the authority under which the same is made or the payment of any tax thereon, and that in acting in respect to certificates of stock believed by said Registrar to be signed by officers of this Corporation authorized to sign the same, sealed with the corporate seal and countersigned by said Transfer Agent, this Corporation will hold said National Bank (or Trust Company) harmless against all liability.

FURTHER RESOLVED, that said National Bank (or Trust Company) may at any time withdraw from its appointment as Registrar by giving thirty days notice in writing to this Corporation and by refunding such proportion of the compensation paid to it for acting as such Registrar as shall not have been earned at the time such withdrawal becomes effective.

FURTHER RESOLVED, that said National Bank (or Trust Company) may apply to.....*R. J. Smith*.....of.....*New York City*..... counsel for this Corporation or to its own counsel for advice in respect to any question relating to its duties as such Registrar and this Corporation hereby undertakes to hold said National Bank (or

Trust Company) harmless against all claims by whomsoever made on account of any act done in good faith in connection with said agency or of any failure to act, whether on advice of counsel or not, and agrees that said National Bank shall be liable only for its wilful default and gross negligence.

FURTHER RESOLVED, that the proper officers of this Corporation be and they hereby are directed and empowered to do any and all things necessary and proper to effectuate the purposes of these resolutions and in particular to certify these resolutions and lodge them with said National Bank (or Trust Company) and to certify to said National Bank (or Trust Company) all facts and documents with respect to this Corporation which said National Bank (or Trust Company) may require.

WE FURTHER CERTIFY:

(1) That.....*Browne & Greene*.....Company is the duly appointed and acting Transfer Agent for the stock of this Corporation;

(2) That this Corporation was chartered under the laws of the State of.....*New York*.....in the month of.....*May*....., *1919;*

(3) That total authorized capital stock of this Corporation is:
.....*Two Thousand*.....* shares of PREFERRED stock of the par value of.....*One Hundred*.....dollars each, and.....*Three Thousand*..... shares of COMMON stock of the par value of.....*One Hundred*..... dollars each, making the total par value of its authorized capital stock .....*Five Hundred Thousand*.....dollars;

(4) That this Corporation has issued and outstanding at the present time:
.....*Fifteen Hundred*.....shares of PREFERRED stock and.....*Three Thousand*.....shares of COMMON stock, making the total par value of the stock now issued and outstanding.....*Four Hundred and Fifty Thousand*.....dollars;

(5) That the money or property for which the above mentioned shares were issued has been actually paid or conveyed, transferred and delivered to this Corporation;

(6) That the officers of this Corporation authorized to sign certificates of stock are the President or Vice-President and.....*Treasurer*.....or Assistant *Treasurer*, and no other officers have ever been authorized to execute certificates of stock;

That at the present time said officers are as follows:

President,	Mr.....*John Richards*.....
Vice-President,	Mr.....*R. J. Smith*.....
Treasurer,	Mr.....*Adam Roe*.....
Assistant *Treas.*	Mr.....*Ralph Hay*.....

WE FURTHER CERTIFY that we are delivering to you herewith the following, each identified by the autograph signature of the Secretary of this Corporation, viz:

(1) A copy of the charter or certificate of incorporation of this Corporation with all amendments, certified by the Secretary of State or other proper officer of the state in which this Corporation is incorporated;

* Write out numbers.

(2) A true copy of the by-laws of this Corporation with all amendments;
(3) Specimen copies of all certificates of stock of this Corporation;
(4) Card or cards containing the names and genuine autograph signatures of the officers now authorized to sign certificates of stock of this Corporation;
(5) Card or cards containing the names and genuine autograph signatures of all former officers of this Corporation authorized to sign certificates of stock now outstanding and the offices filled by them respectively, together with the terms of their incumbency;
(6) Card or cards containing the genuine autograph signatures of the Transfer Agent of this Corporation authorized for use in countersigning certificates of stock of this Corporation.

In Witness Whereof, we have signed these presents as President and as Secretary of this Corporation and have hereunto affixed the seal of this Corporation, the....*9th*....day of....*June*...., 1921.

.....*John Richards*.....
President.

(Corporate Seal)

.....*James Street*.....
Secretary.

Address of Corporation....*1491 John Street, New York City*.....

Form 22. Incineration Certificate of a Trust Company

Incineration Certificate

This Is to Certify that we have this day destroyed by fire in the furnace of the building known as the "Woolworth Building," 233 Broadway, New York City, the following described canceled bonds:

(Name of corporation)
First Mortgage 6%, 12 year Gold Bond
Due May, 1919
Numbers.....

Dated, New York.....1921.

The First National Bank
By.....
Assistant Trust Officer.

Witnesses to Cremation

.....
Representative of The First National Bank

.....
Representing (Name of Corporation)

Form 23. Certificate of Stock by Bank as Transfer Agent

(To be modified as required by circumstances.)

BLANK NATIONAL BANK (OR TRUST COMPANY)

TRANSFER AGENT

CERTIFICATION AS TO ORIGINAL ISSUE OF STOCK TO ACCOMPANY FORM NO. 2627

BLANK NATIONAL BANK (OR TRUST COMPANY),
New York City.

We, the undersigned,.....*John Richards*.....as President, and .....*James Street*.....as Secretary, respectively, of the....*Richards & Roe*....Corporation, pursuant to the resolutions of the Board of Directors of the said Corporation, adopted....*June 4th*.... 1921, appointing Blank National Bank (or Trust Company) the Transfer Agent of the stock of said Corporation, HEREBY CERTIFY that by resolution of the said Board of Directors, duly adopted on the....*4th*.....day of.....*June*...., 1921, an original issue of.....*Five Hundred**.....shares of preferred stock of the par value of.....*One Hundred*.....dollars each, and..... shares of common stock of the par value of.....dollars each, was duly authorized and we hereby certify that certificates in the following names and for the following number of shares may properly be issued under the authority of the said resolution authorizing such original issue, and you are hereby authorized and directed as such transfer agent to countersign said certificates in accordance with the terms of the resolutions appointing you said transfer agent:

PREFERRED STOCK

Name in which Certificate is to be Issued	Address	Number of Shares
Miles Ames	*6549 Wall Street*	*500*

(N. B. Any of the above space not occupied by names, addresses and numbers should be lined out with red ink.)

COMMON STOCK

Name in which Certificate is to be Issued	Address	Number of Shares

(N. B. Any of the above space not occupied by names, addresses and numbers should be lined out with red ink.)

We further certify that the money or property for which the shares to be represented by the certificates which you are herein authorized to countersign are to be issued, has been actually (or will have been) paid or conveyed, transferred and delivered to this Corporation.

The total number of shares of stock of this Corporation which you

* Write out numbers.

are authorized to transfer, including the authorization above given and previous authorizations, is now.....*Five Hundred*.....shares of preferred stock of the par value of.....*One Hundred*.....dollars each, and .....shares of common stock of the par value of..... dollars each, making the total par value of the stock which you are now authorized to transfer.....*Fifty Thousand*.....dollars.

IN WITNESS WHEREOF, we have signed these presents as President and as Secretary of the said Corporation and have hereunto affixed the seal of the said Corporation, the....*9th*....day of.....*June*....., 1921.

.....*John Richards*.....
President.

.....*James Street*.....
Secretary.

(CORPORATE SEAL)

BLANK NATIONAL BANK (OR TRUST COMPANY),
New York City.

You are hereby ordered to deliver the certificates of stock described in the foregoing certificate, after countersignature by you and by the duly authorized Registrar of this Corporation, to the following named persons personally or by registered mail addressed to the addresses given below:
....*Miles Ames*.....*6549 Wall Street, New York, N. Y*.....
.....
.....

(N. B. Any of the above space not occupied by names, addresses and instructions should be lined out with red ink.)

Dated, ...*June 9th*,....., 1921. .....*John Richards*.....
As....*President*....of
.....*Richards & Roe*.....Corporation
(To be signed by the officer authorized to direct the delivery of the certificates by resolution appointing the Transfer Agent.)

(CORPORATE SEAL)

Form 24. Certificate of Stock by Bank as Registrar

(To be modified as required by circumstances.)

BLANK NATIONAL BANK (OR TRUST COMPANY) REGISTRAR

CERTIFICATION AS TO ORIGINAL ISSUE OF STOCK TO ACCOMPANY FORM NO. 2625

We, the undersigned.....*John Richards*....., as President, and .....*James Street*.....as Secretary, respectively, of the.....*Richards & Roe*....Corporation, pursuant to the resolutions of the Board of Directors of the said Corporation, adopted.....*June 4th*....., 1921, appointing the Blank National Bank (or Trust Company) Registrar of the stock of the said Corporation, HEREBY CERTIFY that by resolution of the said Board of Directors, duly adopted, on the.....*4th*.....day of.....*June*....., 1921, an original issue of.....*Five Hundred**.....shares of preferred stock of the par value of.....*One Hundred*.....dollars each, and of

* Write out numbers.

.....shares of common stock of the par value of..... dollars each, was duly authorized and you are hereby authorized and directed as such Registrar, to countersign and register, as an original issue, in accordance with the terms of said resolutions under which you were appointed Registrar of said stock, certificates for not to exceed .....*Five Hundred*.....shares of preferred stock and..... shares of common stock, which we hereby certify may properly be issued under the authority of the said resolutions authorizing such original issue.

We further certify that the money or property for which the shares to be represented by the certificates which you are herein authorized to countersign and register are to be issued, has been actually (or will have been) paid or conveyed, transferred and delivered to this Corporation.

The total number of shares of stock of this Corporation which you are authorized to register, including the authorization above given and any previous authorizations, is now.....*Five Hundred*.....shares of preferred stock of the par value of.....*One Hundred*.....dollars each, and.....shares of common stock of the par value of..... dollars each, making the total par value of the stock which you are now authorized to register.....*Fifty Thousand*.....dollars.

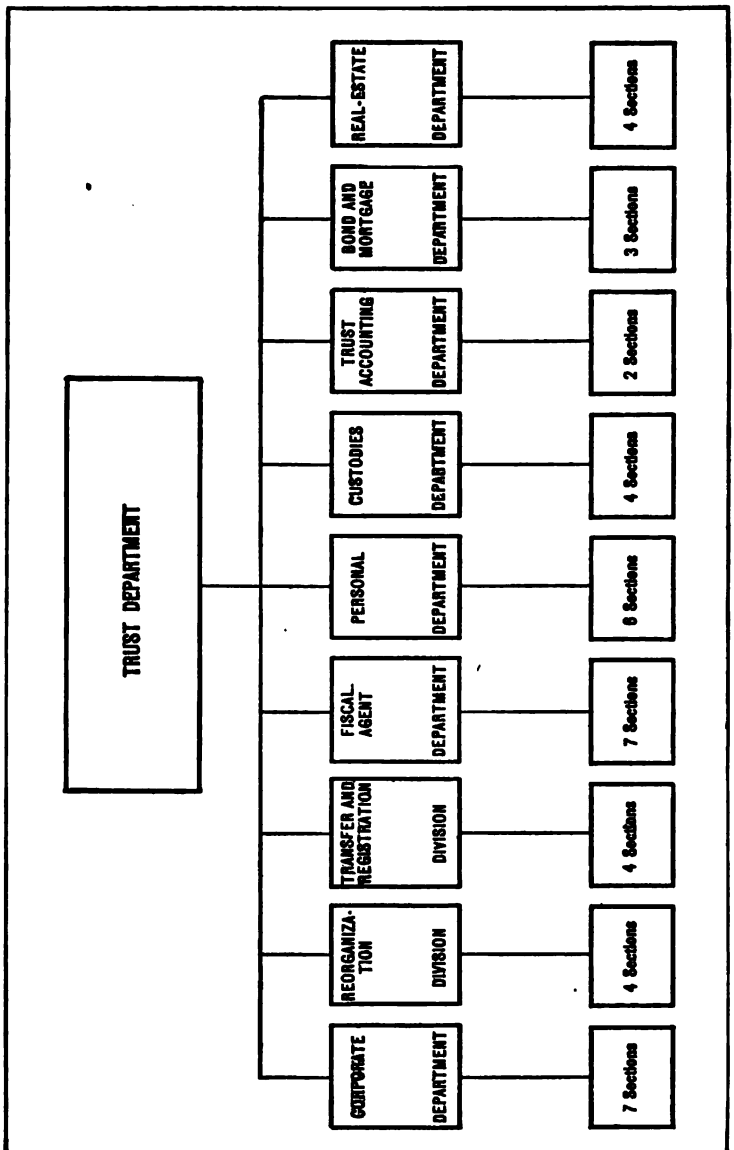
In Witness Whereof, we have signed these presents as President and as Secretary of the said Corporation, and have hereunto affixed the seal of the said Corporation, this.....*9th*.....day of.....*June*....., 1921.

.....*John Richards*.....
President.

.....*James Street*.....
Secretary.

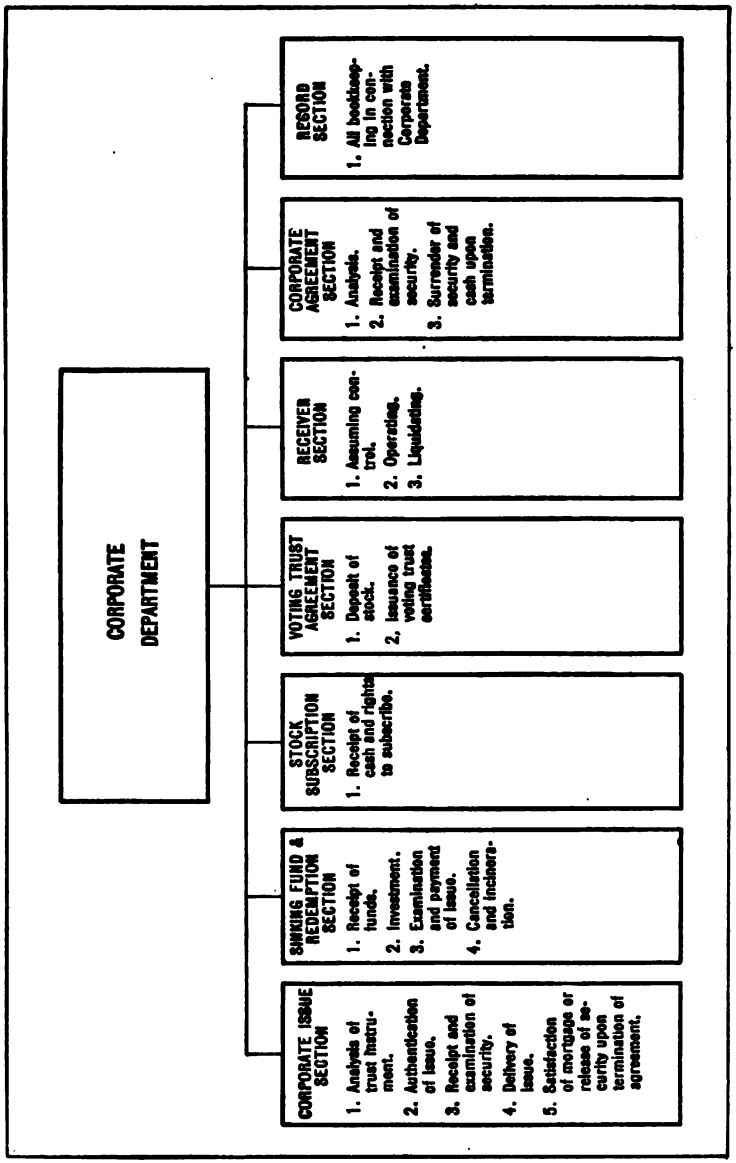
(CORPORATE SEAL)

Form 25. (a) Chart Showing Formation of a Model Trust Department*

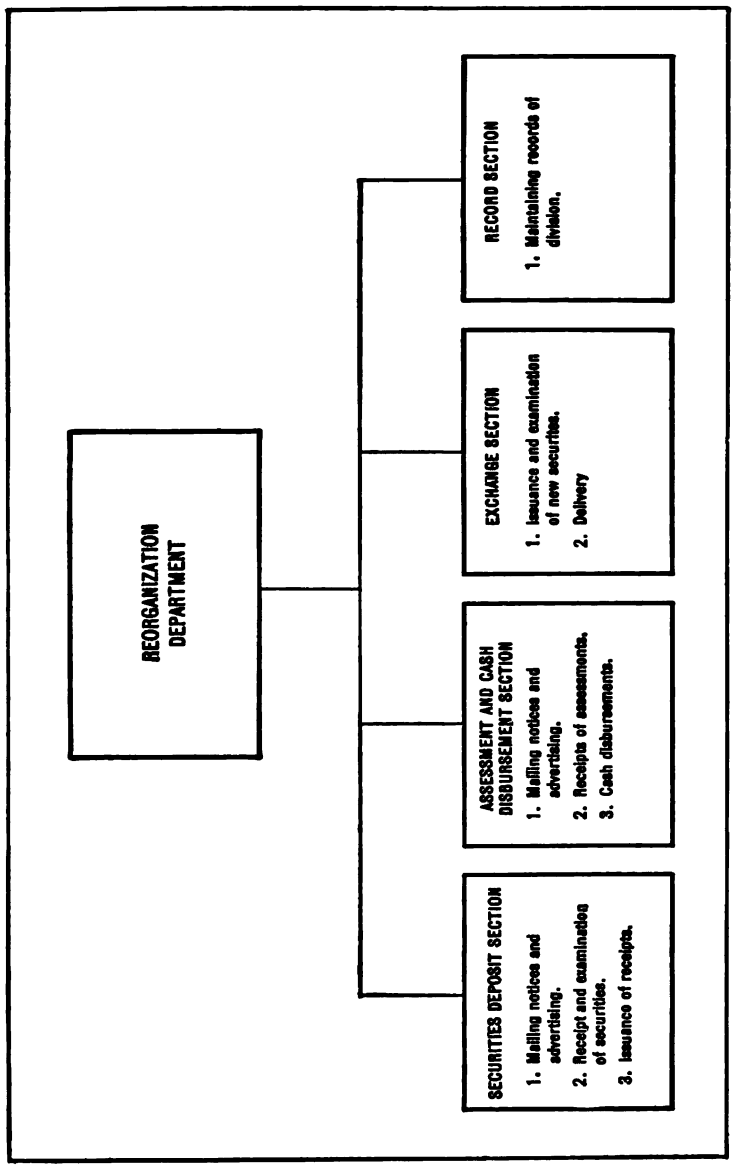


* See also charts inserted in Chapter LXII.

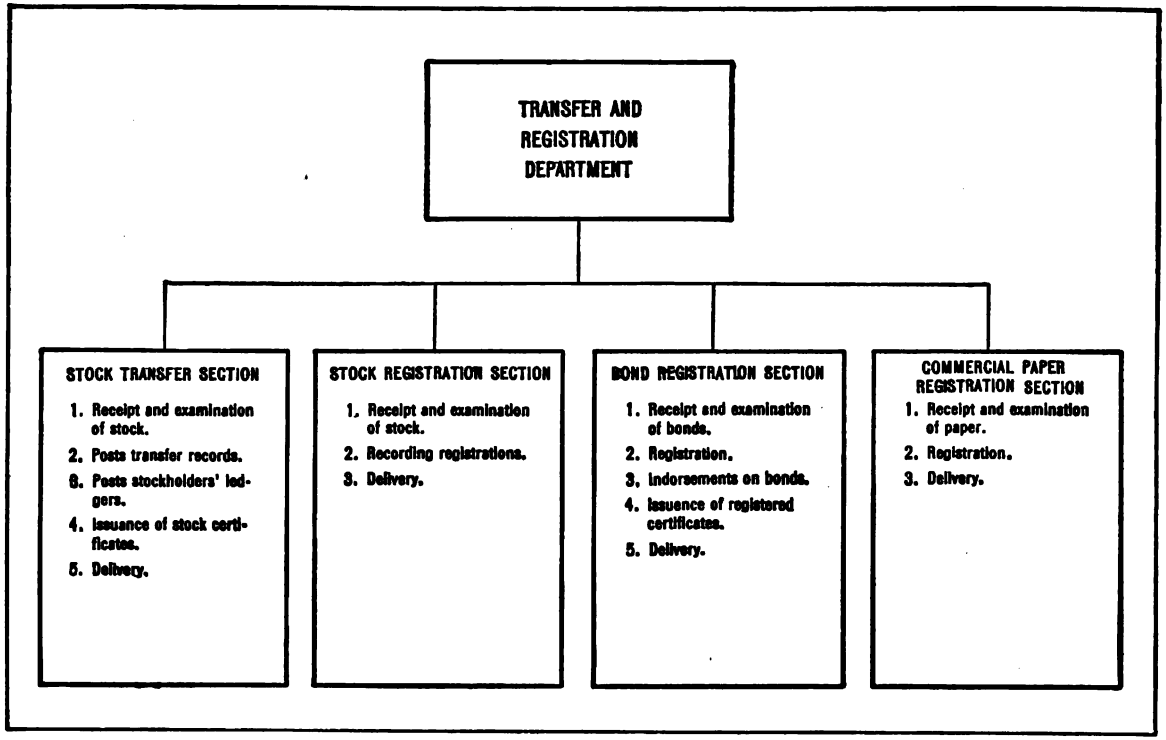
Form 25. (b) Chart Showing Formation of a Model Trust Department



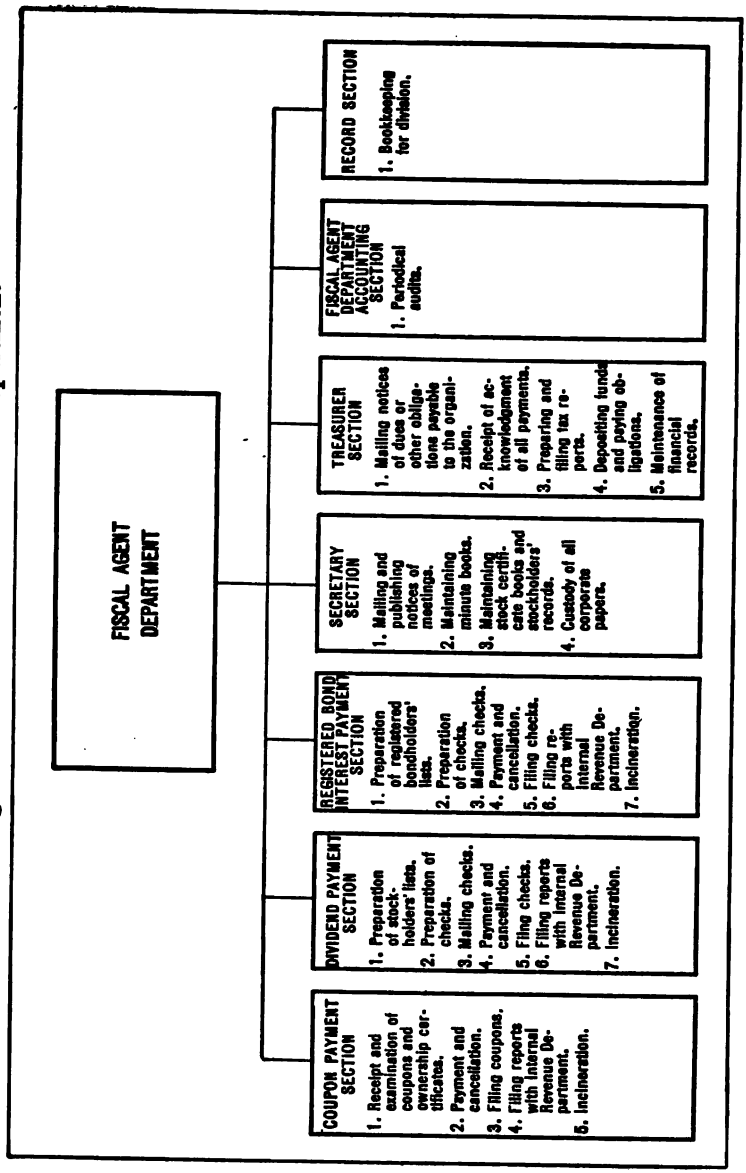
Form 25. (c) Chart Showing Formation of a Model Trust Department



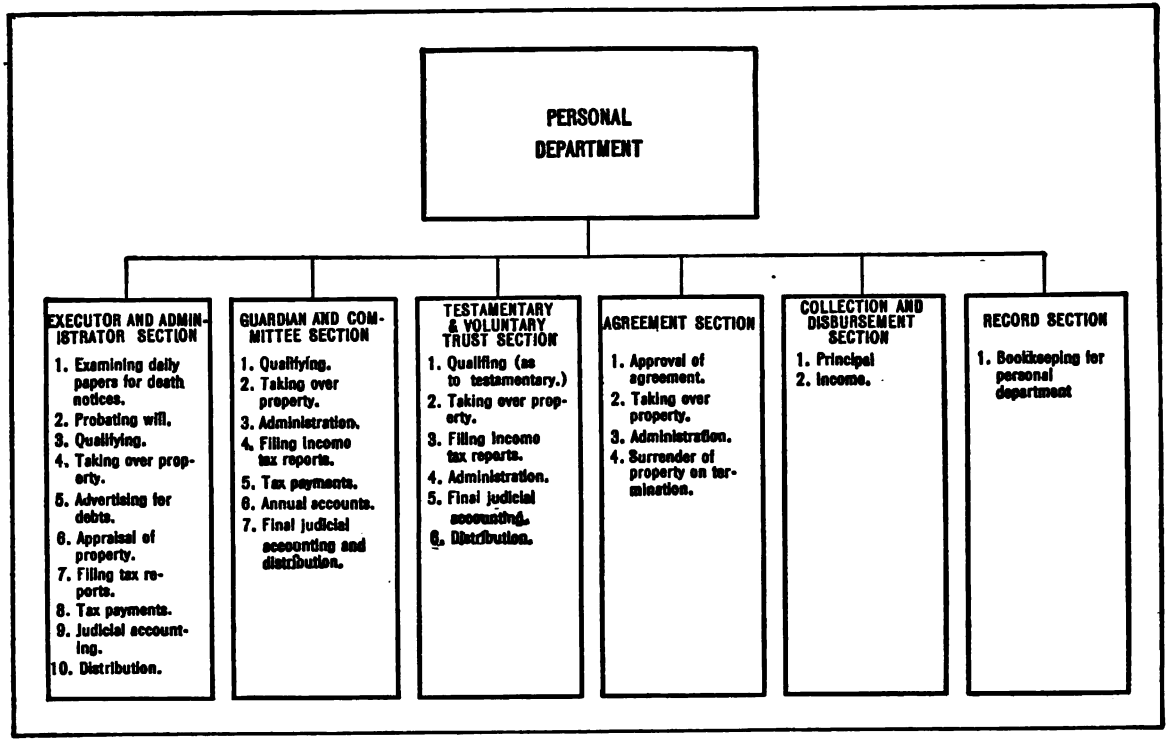
Form 25. (d) Chart Showing Formation of a Model Trust Department



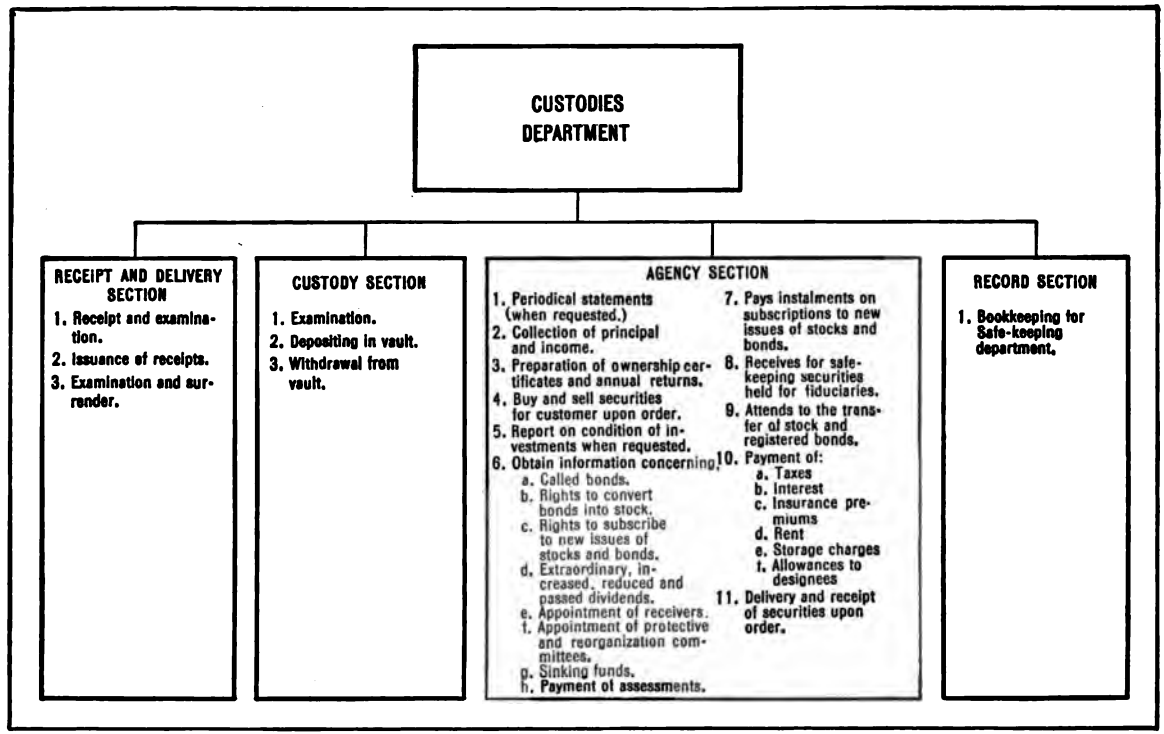
Form 25. (e) Chart Showing Formation of a Model Trust Department



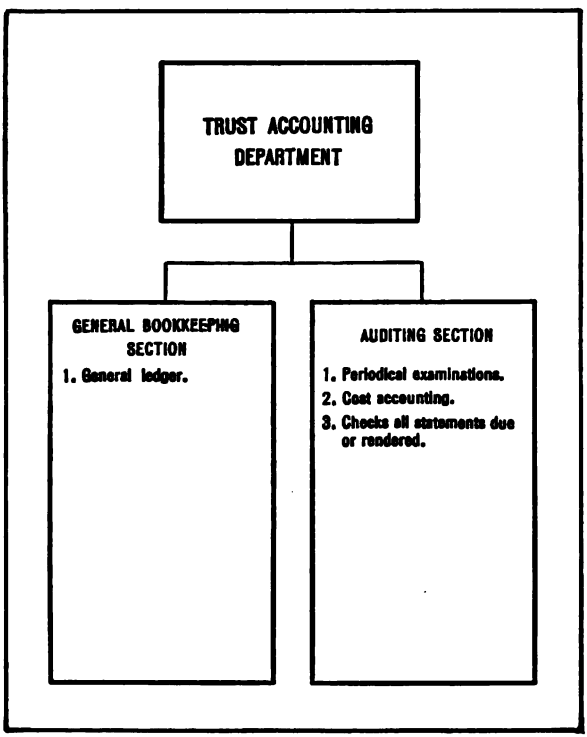
Form 25. (f) Chart Showing Formation of a Model Trust Department



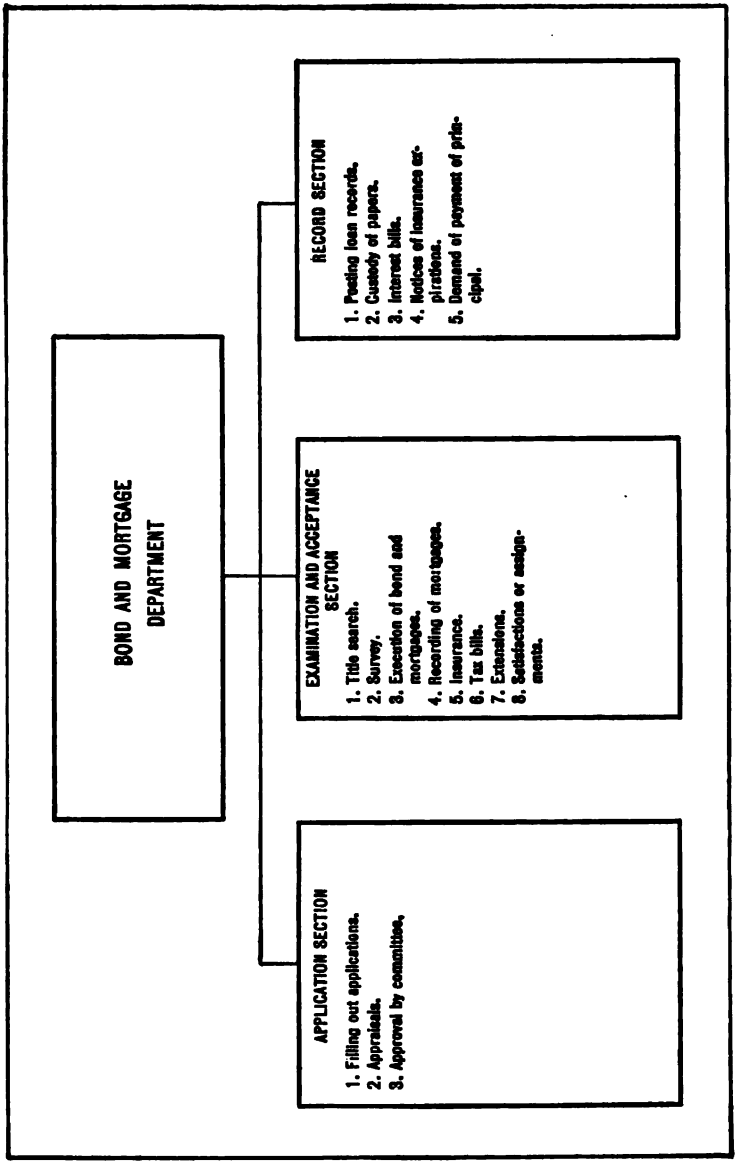
Form 25. (g) Chart Showing Formation of a Model Trust Department



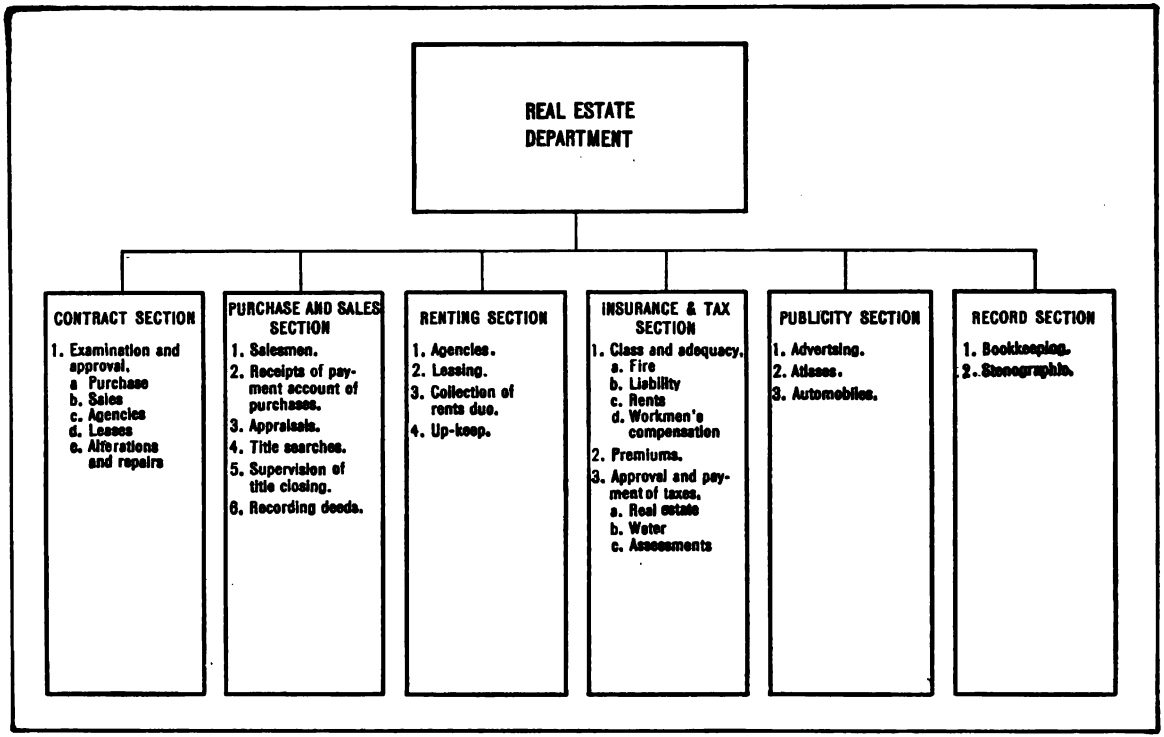
Form 25. (h) Chart Showing Formation of a Model Trust Department



Form 25. (i) Chart Showing Formation of a Model Trust Department



Form 25. (j) Chart Showing Formation of a Model Trust Department



Form 26. (a) Synoptic for the Accounts of an Administrator (left hal)

1. ESTATE OF HOMER W. SPEER

Entry No.	See Sections	Cash Montrose State Bank Dr.	Cash Montrose State Bank Cr.	Cash Savings Accounts Dr.	Cash Savings Accounts Cr.	Date	Name and Item	Check No.	Inventory Dr.	Inventory Cr.	Loss on Realization Dr.	Gain on Realization Cr.
						1919						
1	591, 596	$2,100.00				Oct. 16	American Carso Co., 7% dividend on stock			$2,100.00		
2	592		$ 10.40			Nov. 17	Clerk of probate court, certified copies of will and letters testamentary	1				
3	593, 596	9,136.28				18	Montrose State Bank, decedent's checking account			9,136.28		
4	593, 596			$3,000.00		18	Montrose Trust Co., decedent's savings account			3,000.00		
5	591, 596	5,117.69				20	Fellowship Life Insurance Co., principal and dividends, policy No. 11736			5,117.69		
6	594		1,000.00			21	Mrs. Marie Speer Williamson, advance on distribution	2				
7	592		500.00			22	Lewis and Salem, undertakers' bill	3				
8	595		14.97			23	James T. Holmquest, decedent's check No. 11397	4				
9	596					Dec. 11	Estate of Homer W. Speer, appraisal of assets		$73,230.57			
10	597		4,002.10			12	Treasurer of Morgan County, last half of 1918 taxes now due	5				
11	598			60.00		31	Montrose Trust Co., interest on savings account to date			35.00		
						1920						
12	598	250.00				Jan. 2	Amos Breslau, interest on mortgage note			145.83		
13	598	500.00				5	Gypsum Valley Co., coupons on bonds			291.67		
14	599		112.10			6	Henry T. Lewis, claim	6				
15	600		1,030.00			7	Peter Kane, mortgage note and interest	7				
16	601		231.12			Mar. 8	Collector of Internal Revenue, tax on decedent's income	8				
17	602	142.00				9	J. H. Hodges, two shares common stock of the Hodges Co.					
18	602			1,020.00		10	Montrose State Bank, savings account					
19	592		50.00			11	Manhattan Garage Co., repairs to automobile	9				
20	603	1,200.00				12	Luella M. Fry, 5-passenger Washington touring car			1,000.00		$200.00
21	594		700.00			13	John Speer, advance on distribution	10				
22	594	700.00				13	John Speer, Hendricks coupe			700.00		
23	604		2,000.00			Apr. 1	Treasurer of State, estimate of state inheritance taxes	11				
24	597		3,012.26			June 13	Treasurer of Morgan County, first half of 1919 taxes now due	12				
25	598	500.00				July 2	Gypsum Valley Co., coupons on bonds					
26	607	9,500.00				7	Second National Bank, sale of Gypsum Valley Co. bonds			9,000.00		500.00
27	607		6,000.00			7	Second National Bank, payment of note					
28	608					7	Second National Bank, deferred interest on above note			349.68		
29	610	2,100.00				Oct. 3	American Carso Co., 7% dividend on stock					
30	611	2,448.00			$3,060.00	Nov. 29	Montrose Trust Co., full settlement on liquidation				$ 600.00	
31	612	3,000.00				30	National Fire Insurance Co., settlement under policy No. 19685			5,650.00	2,650.00	
32	608					30	National Fire Insurance Co., prepaid insurance on above policy			42.22		
33	597		3,012.26			Dec. 13	Treasurer of Morgan County, second half of 1919 taxes now due	13				
34	604	102.02				14	Treasurer of State, refund of excess inheritance taxes					
		$36,795.99	$21,675.21	$4,060.00	$3,060.00				$73,230.57	$36,568.37	$3,250.00	$700.00

Form 26. (b) Synoptic for the Accounts of an Administrator (right half)

SYNOPTIC

1.

Entry No.	See Sections	Assets not in Inventory	Funeral and Administration Expenses		Debts of Decedent	Distribution of Assets Other than Cash	Distribution of Corpus Cash		Estate Corpus	Income	Loss on Income	Expense, Income	Distribution of Income
		Cr.	Dr.	Cr.	Dr.	Dr.	Dr.	Cr.	Cr.	Cr.	Dr.	Dr.	Dr.
1	591, 596												
2	592		$ 10.40										
3	593, 596												
4	593, 596												
5	591, 596												
6	594						$1,000.00						
7	592		500.00										
8	595				$ 14.97								
9	596								$73,230.57				
10	597				4,002.10								
11	598									$ 25.00			
12	598									104.17			
13	598									208.33			
14	599				112.10								
15	600				1,018.33							$ 11.67	
16	601				231.12								
17	602	$ 142.00											
18	602	1,011.67								8.33			
19	592		50.00										
20	603												
21	594						700.00						
22	594												
23	604						2,000.00						
24	597											3,012.26	
25	598									500.00			
26	607												
27	607				6,000.00								
28	608											349.68	
29	610									2,100.00			
30	611										$ 12.00		
31	612												
32	608											42.22	
33	597											3,012.26	
34	604							$ 102.02					
		$1,153.67	$560.40		$11,378.62		$3,700.00	$ 102.02	$73,230.57	$2,945.83	$ 12.00	$6,428.09	

Form 27. Realization Account

REALIZATION ACCOUNT

ESTATE OF HOMER W. SPEER

Asset	Sold to	Date of Order Authorising Sale	Synoptic Folio	Appraised Value	Amount Realised	Loss on Realization	Gain on Realization	Distributed or Charged to Expense	Assets not Disposed of
Checking account in Montrose State Bank			1	$ 9,136.28	$ 9,136.28				
Savings account in Montrose Trust Co.			1	3,000.00	2,400.00	$600.00			
Accrued interest thereon			1	35.00	35.00				
Account due from Denver Reservoir Co., $367.57				no value					no value
Account due from Charles C. Labanon				762.20					$ 762.20
Policy No. 11736, Fellowship Life Insurance Co.			1	5,117.69	5,117.69				
Mortgage note of Amos Breslau				5,000.00					5,000.00
Accrued interest thereon			1	145.83	145.83				
300 shares stock of American Carso Co., par $30,000				30,900.00					30,900.00
Dividend declared Sept. 30, 1919			1	2,100.00	2,100.00				
Bonds of Gypsum Valley Co., par $10,000	Second National Bank	12/18/19	1	9,000.00	9,500.00		$500.00		
Accrued interest thereon			1	291.67	291.67				
Five-passenger Washington touring car	Luella M. Fry	12/18/19	1	1,000.00	1,200.00		200.00		
Hendricks coupe	John Speer	12/18/19	1	700.00	700.00				
Deferred interest on note to Second National Bank			1	349.68				$349.68	
National Fire Insurance Co., settlement policy No. 19685	National Fire Insur'ce Co.	11/30/20	1	5,650.00	3,000.00	2,650.00			
Deferred insurance on National Fire Insurance Co., policy No. 19,685			1	42.22				42.22	
				$73,230.57	$33,626.47	$3,250.00	$700.00	$391.90	$36,662.20
Assets not in Inventory:									
Two shares common stock of the Hodges Co.	J. H. Hodges	3/1/20	1	142.00	142.00				
Montrose State Bank, savings account			1	1,000.00	1,000.00				
Accrued interest thereon			1	11.67	11.67				
Note of Robert M. Olmstead, due Feb. 1, 1921, no interest				200.00					200.00
				$74,584.24	$34,780.14	$3,250.00	$700.00	$391.90	$36,862.20

Form 28. Account of Proceedings

.....COUNTY SURROGATE'S COURT
In the matter of the petition of.....
.....
to render and settle.....
account as.....of
..... Deceased.

ACCOUNT OF PROCEEDINGS

To the Surrogate's Court of the County of.....
.....
do render the following account of.....proceedings as .....of....., deceased:
On the.....day of.....A. D. 192.. Letters.....
were duly issued to..... On the.....day of.....
A. D. 192.., ...caused an inventory of the personal estate of the deceased to be filed in this office, which personal estate therein set forth amounts, by appraisements by the appraisers duly appointed, to $.....

Schedule A, hereunto annexed, contains an itemized statement of all the property contained in said inventory, or which has come into..... possession since the making of such inventory, also a statement of the property sold by.....at public or private sale, with the prices and manner of sale, which sales were fairly made by.....at the best prices that could then be had, with due diligence, as.....then believed. It also contains a statement of all the debts due the said estate and mentioned in said inventory, which have been collected, and also of all interest or moneys received by.....for which.....legally accountable on account of principal, and also a statement of all debts in said inventory mentioned, not collected or collectible by....., together with the reasons why the same have not been collected and are not collectible; and also a statement of the articles of personal property mentioned in said inventory distributed or remaining unsold, and the reason of the latter's being unsold, and their appraised value, also a statement of all property mentioned therein which has been lost by accident, without any willful default or negligence, the cause of its loss and its appraised value. No other assets than those in said inventory except as herein set forth have come to.....possession or knowledge, and all the increase and decrease in the value of any assets of said deceased is allowed or charged in said Schedule.

Schedule B, hereunto annexed, contains a statement of all moneys paid by.....for funeral and other necessary expenses for said estate, together with the reasons for and object of such expenditures.

On or about the.....day of.....A. D. 192.., ... caused a notice for claimants to present their claims against the said estate to.....within the period fixed by law, and at a certain place therein specified, to be published according to law, for six months pursuant to an order of the Surrogate of the County of..... Due proof of publication herein filed,.....refer to as part of this account.

Schedule C, hereunto annexed, contains a statement of all the claims of creditors presented to and allowed by.....or disputed by..... and for which judgment or decree has been rendered against..... together with the names of the claimants, and general nature of each claim, its amount, and the time of the rendition of the judgment; it also

contains a statement of all moneys paid by.....to the creditors of the deceased, and their names, and the times of such payments.

Schedule D, hereunto annexed, contains a statement of all moneys paid on general and demonstrative legacies to the legatees, widow or next of kin of the deceased.

Schedule E, hereunto annexed, contains a statement of all moneys paid to the trustee....on account of principal.

Schedule F, hereunto annexed, contains, so far as they can be ascertained with due diligence, the names and post-office addresses of all persons interested in this proceeding who are required to be cited, or concerning whom the Court is required to have information, to the best of.....knowledge, information, and belief.

Schedule G, hereunto annexed, contains a statement of all income received from said estate.

Schedule H, hereunto annexed, contains a statement of all loss of income without any willful default or negligence and the cause of its loss.

Schedule I, hereunto annexed, contains a statement of all moneys paid by.....for necessary expenses against the income of said estate, together with the reasons for and object of such expenditures.

Schedule J, hereunto annexed, contains a statement of all moneys paid to the trustee....on account of income.

Schedule K, hereunto annexed, contains a statement of all other facts affecting administration of said estate, right, and those of others interested therein.

SUMMARY OF ACCOUNT

First, as to corpus:		
I charge myself with:		
Inventory, per Schedule A.....	$152,364.85	
Assets Not in Inventory, per Schedule A....	1,475.23	
Gain on Realization, per Schedule A.....	952.28	
Total Charges		$154,792.36
I credit myself with:		
Loss on Realization, per Schedule A.....	$ 4,250.63	
Specific Legacies Distributed, per Schedule A	16,023.28	
Inventory Not Realized Upon, per Schedule A	81,841.49	
Funeral and Administration Expenses, per Schedule B	5,090.52	
Debts of Decedent, per Schedule C.....	15,758.04	
Payments of General and Demonstrative Legacies, per Schedule D.....	6,000.00	
Payments of Principal to Trustee, per Schedule E	7,239.05	
Total Credits		136,203.01
Leaving a balance of cash of.....		$ 18,589.35
Inventory Not Realized Upon, per Schedule A.....		81,841.49
Total Balance of Corpus.....		$100,430.84

Second, as to income:

I charge myself with:

Income Realized, per Schedule G.....		$ 10,132.69
I credit myself with:		
Expense Against Income, per Schedule H..	$ 2,332.28	
Loss on Income, per Schedule I.....	750.00	
Payments of Income to Trustee, per Schedule J	4,000.00	
Total Credits		7,082.28
Balance of Income Cash.....		$ 3,050.41

Leaving a balance of..... $..... to be distributed to those entitled thereto, subject to the deductions of the amount of.....commissions and the expenses of this accounting. The said schedules, which are severally signed by.....are part of this account.

The schedules, which are merely a matter of accounting detail not presenting any problems, are not given here.

It must be remembered that most states provide by law for the form and phraseology of the final accounting. Although the above is generally representative of all, yet the law of the state in which the estate is being administered must be consulted.

Form 29. (a) Synoptic for Accounts of an Individual Trustee (folio 1)

ESTATE OF JAMES C. DAWSON

1. CHARLES FRAZIER, TRUSTEE

Entry No.	Date	Item	Folio	Cash			Investments			Principal			Income		
				Dr.	Cr.	Dr. Bal.	Dr.	Cr.	Dr. Bal.	Dr.	Cr.	Cr. Bal.	Dr.	Cr.	Cr. Bal.
	1921														
1	Feb. 12	Butler University Trust—Securities set aside and now received from executor, as follows: 100 shares Appleton Mining Co., 7% preferred stock, par value $10,000, present market, $10,375, inventory value, $10,300. Bond of, *etc.*	1				$40,000.00		$40,000.00		$40,000.00	$40,000.00			
2	Feb. 12	Janet Dawson Reeves Trust—Cash, securities, and real estate set aside and now received from executor, as follows: Cash, $10,370, apartment house located on lots 7-12, *etc*	2	$10,370.00		$10,370.00	89,630.00		129,630.00		100,000.00	140,000.00			
3	Feb. 12	Mary Dawson Allen Trust—Cash and securities set aside, *etc.*	3	1,282.00		11,652.00	98,718.00		228,348.00		100,000.00	240,000.00			
4	Feb. 12	Undivided Estate—Cash, securities, real estate, and other assets received from executor, not specifically set aside for any trust, but held in trust to furnish an annuity of $2,400 to Henry G. Dawson and to maintain and educate the children of James C. Dawson, as follows, *etc.*	4	5,348.00		17,000.00	334,652.00		563,000.00		339,800.00	579,800.00		$200.00	$200.00
5	Feb. 13	Janet Dawson Reeves Trust—Purchased for this trust $10,000 par value of 5½% bonds of City of Montrose, Colo., at 102 and commission	2		$10,210.00	6,790.00	10,210.00		573,210.00						
6	Feb. 20	Mary Allen Dawson Trust—Sale of 40 shares of Stevenson Manufacturing Co. stock, inventory value $3,400, for $4,600, less commission	3	4,595.00		11,385.00		$3,400.00	569,810.00		1,195.00	580,995.00			
7	Feb. 20	Mary Allen Dawson Trust—Sale of $1,000 bond of Tinplate Can Co., inventory value $950, for $920, less commission	3	919.00		12,304.00		950.00	568,860.00	$31.00		580,964.00			
8	Mar. 1	Janet Dawson Reeves Trust—Rent for March from, *etc.*	2	350.00		12,654.00								350.00	550.00

Form 29. (b) Synoptic for Accounts of an Individual Trustee (folio 2)

2.

Entry No.	Date	Item	Folio	Cash			Investments			Principal			Income		
				Dr.	Cr.	Dr. Bal.	Dr.	Cr.	Dr. Bal.	Dr.	Cr.	Cr. Bal.	Dr.	Cr.	Cr. Bal.
		Brought Forward				$12,654.00			$568,860.00			$580,964.00			$ 550.00
9	1921 Mar. 1	Janet Dawson Reeves Trust—Payment on income	2		$ 350.00	12,304.00							$ 350.00		200.00
		Miscellaneous transactions omitted in order not to complicate the text unnecessarily are summarized as follows:													
		Butler University Trust	1	$2,424.00	2,424.00	12,304.00							2,424.00	$2,424.00	200.00
		Janet Dawson Reeves Trust	2	68,716.00	68,643.00	12,377.00	$60,390.00	$50,000.00	579,250.00		$10,416.00	591,380.00	8,253.00	8,300.00	247.00
		Mary Allen Dawson Trust	3	23,389.00	23,388.00	12,378.00	17,388.00	17,390.00	579,248.00	$1,243.00	1,012.00	591,149.00	6,000.00	6,230.00	477.00
		Undivided Estate	4	101,200.00	90,054.00	23,524.00	34,654.00	33,460.00	580,442.00	2,260.00		588,889.00	55,400.00	70,000.00	15,077.00
10	1922 Jan. 22	Janet Dawson Reeves Trust—Bill of A. C. Hartman for repairs to, *etc.*	2		47.00	23,477.00							47.00		15,030.00
11	Jan. 24	Undivided Estate—Investment of excess income, cash as follows, *etc.*	4		5,346.00	18,131.00	5,346.00		585,788.00						
12	Jan. 31	Mary Allen Dawson Trust—Transferring excess income to Undivided Estate of James C. Dawson	3		230.00	17,901.00							230.00		14,800.00
13	Jan. 31	Undivided Estate—Excess income from Mary Allen Dawson Trust	4	230.00		18,131.00					230.00	589,119.00			
		Entries Made as of Later Dates													
14	1932 May 6	Janet Dawson Reeves Trust—Delivery of assets to executor of estate of Janet Dawson Reeves	2		186.00	17,945.00		110,230.00	475,558.00	110,416.00		478,703.00			
15	1941 Jan. 31	Butler University Trust—Reversion of trust fund	1					40,000.00	435,558.00	40,000.00		438,703.00			
16	Jan. 31	Undivided Estate—Reversion of Butler University Trust Fund	4				40,000.00		475,558.00		40,000.00	478,703.00			

Form 30. Trust Ledger

1. BUTLER UNIVERSITY TRUST

Entry No.	Date	Item	Folio	Cash Dr.	Cash Cr.	Cash Dr. Bal.	Investments Dr.	Investments Cr.	Investments Dr. Bal.	Principal Dr.	Principal Cr.	Principal Cr. Bal.	Income Dr.	Income Cr.	Income Cr. Bal.
	1921														
1	Feb. 12	Securities set aside and now received from executor, as follows: 100 shares Appleton Mining Co., 7% preferred stock, par value $10,000, present market value, $10,375, inventory value, $10,300. *Bond of, etc.*	1				$40,000.00		$40,000.00		$40,000.00	$40,000.00			
		Miscellaneous transactions omitted in order not to complicate the text unnecessarily are summarized as follows	2	$2,424.00	$2,424.00								$2,424.00	$2,424.00	
	1941														
15	Jan. 31	Reversion of trust fund	2					$40,000.00		$40,000.00					

2. JANET DAWSON REEVES TRUST

Entry No.	Date	Item	Folio	Cash Dr.	Cash Cr.	Cash Dr. Bal.	Investments Dr.	Investments Cr.	Investments Dr. Bal.	Principal Dr.	Principal Cr.	Principal Cr. Bal.	Income Dr.	Income Cr.	Income Cr. Bal.
	1921														
2	Feb. 12	Cash, securities, and real estate set aside and now received from executor, as follows: Cash, $10,370; apartment house located on lots 7-12, *etc.*	1	$10,370.00		$10,370.00	$89,630.00		$89,630.00		$100,000.00	$100,000.00			
5	Feb. 13	Purchased for this trust $10,000 par value of 5½% bonds of City of Montrose, Colo., at 102 and commission	1		$10,210.00	160.00	10,210.00		99,840.00						
8	Mar. 1	Rent for March from, *etc.*	1	350.00		510.00								$ 350.00	$350.00
9	Mar. 1	Payment on income	2		350.00	160.00							$ 350.00		
		Miscellaneous transactions omitted in order not to complicate the text unnecessarily are summarized as follows:	2	68,716.00	68,643.00	233.00	60,390.00	$50,000.00	110,230.00		10,416.00	110,416.00	8,253.00	8,300.00	47.00
	1922														
10	Jan. 22	Bill of A. C. Hartman for repairs to, *etc.*	2		47.00	186.00							47.00		
	1932														
14	May 6	Delivery of assets to executor of estate of Janet Dawson Reeves	2		186.00			110,230.00		$110,416.00					

3. MARY ALLEN DAWSON TRUST

Entry No.	Date	Item	Folio	Cash Dr.	Cash Cr.	Cash Dr. Bal.	Investments Dr.	Investments Cr.	Investments Dr. Bal.	Principal Dr.	Principal Cr.	Principal Cr. Bal.	Income Dr.	Income Cr.	Income Cr. Bal.
	1921														
5	Feb. 12	Cash and securities set aside, *etc.*	1	$1,282.00		$1,282.00	$98,718.00		$98,718.00		$100,000.00	$100,000.00			
6	Feb. 20	Sale of 40 shares of Stevenson Manufacturing Co. stock, inventory value, $3,400, for $4,600, less commission	1	4,595.00		5,877.00		$3,400.00	95,318.00		1,195.00	101,195.00			
7	Feb. 20	Sale of $1,000 bond of Tinplate Can Co., inventory value, $950, for $920, less commission	1	919.00		6,796.00		950.00	94,368.00	$ 31.00		101,164.00			
		Miscellaneous transactions omitted in order not to complicate the text unnecessarily are summarized as follows:	2	23,389.00	$23,388.00	6,797.00	17,388.00	17,390.00	94,366.00	1,243.00	1,012.00	100,933.00	$6,000.00	$6,230.00	$230.00
	1922														
12	Jan. 31	Transferring excess income to Undivided Estate of Jane C. Dawson	2		230.00	6,567.00							230.00		

4. UNDIVIDED ESTATE OF JAMES C. DAWSON

Entry No.	Date	Item	Folio	Cash Dr.	Cash Cr.	Cash Dr. Bal.	Investments Dr.	Investments Cr.	Investments Dr. Bal.	Principal Dr.	Principal Cr.	Principal Cr. Bal.	Income Dr.	Income Cr.	Income Cr. Bal.
	1921														
4	Feb. 12	Cash, securities, real estate, and other assets received from executor, not specifically set aside for any trust, but held in trust to furnish an annuity of $2,400 to Henry G. Dawson, and to maintain and educate the children of James C. Dawson, as follows, *etc.*	1	$5,348.00		$5,348.00	$334,652.00		$334,652.00		$339,800.00	$339,800.00		$ 200.00	$ 200.00
		Miscellaneous transactions omitted in order not to complicate the text unnecessarily are summarized as follows:	2	101,200.00	$90,054.00	16,494.00	34,654.00	$33,460.00	335,846.00	$2,260.00		337,540.00	$55,400.00	70,000.00	14,800.00
	1922														
11	Jan. 24	Investment of excess income cash as follows, *etc.*	2		5,346.00	11,148.00	5,346.00		341,192.00						
15	Jan. 31	Excess income from Mary Allen Dawson Trust	2	230.00		11,378.00					230.00	337,770.00			
	1941														
16	Jan. 31	Reversion of Butler University Trust Fund	2				40,000.00		381,192.00		40,000.00	377,770.00			

Form 31. Typical Synoptics Used by Trust Companies

Fort Dearborn Trust and Savings Bank

TRUST ACCOUNT NO.

			DESCRIPTION	CASH			SECURITIES			INCOME			PRINCIPAL		
				Received	Disbursed	Balance	In	Out	Balance	Decreased	Increased	Balance	Decreased	Increased	Balance

FIRST WISCONSIN TRUST COMPANY, MILWAUKEE

REMARKS

TRUST NO.

	STOCKS & BONDS			REAL ESTATE			ACCOUNTS RECEIVABLE			ACCOUNTS PAYABLE			SUNDRY			PRINCIPAL		
	IN	OUT	BALANCE	DEBIT	CREDIT	BALANCE	DEBIT	CREDIT	BALANCE	DEBIT	CREDIT	BALANCE	DEBIT	CREDIT	BALANCE	WITHDRAWAL	DEPOSIT	BALANCE

FIRST WISCONSIN TRUST COMPANY, MILWAUKEE

TRUST NO. NAME

DATE	EXPLANATION	VOUCHER	FOLIO	CASH			INCOME & EXPENSE			NOTES & MORTGAGES		
				DEBIT	CREDIT	BALANCE	DEBIT	CREDIT	BALANCE	IN	OUT	BALANCE

Form 32. (a) Detailed Accounting Forms of a Trust Department

——— NATIONAL BANK, AS _____ ESTATE OF _____

WITH _____, AS _____ CORPUS _____ DIED RESIDENT OF _____

DATE OF LETTERS _____ SURROGATE COURT, COUNTY OF, ___ STATE

DATE OF DEATH _____ DATE OF PROBATE _____

	Date	INFORMATION	Distributed Expense and Debts	Decrease	Inventory	Increase	Corpus	
			Debit	Debit	Credit	Credit	Cr. Balance	

Form 32. (b) Detailed Accounting Forms of a Trust Department

_____ Estate of _____ Asset—Bank Balances —— National Bank, as _____

	Date		INFORMATION	Name of Bank, Trust Co. Etc.	Bank Book No.	State Located in	Interest Rate	Debit	Credit	Debit Balance	

Form 32. (c) Detailed Accounting Forms of a Trust Department

Estate of _____ Asset —Stocks —— National Bank, as _____

NAME OF COMPANY _____ Incorporated in _____
Kind _____ Provisions _____ Dividend Payable _____ Rate _____ Par Value _____

	DATE		NO. OF SHARES	INFORMATION	CERTIFICATE NUMBERS	RECEIVED DR.		DELIVERED CR.		DR. BALANCE	

NAME OF COMPANY _____ Incorporated in _____
Kind _____ Provisions _____ Dividend Payable _____ Rate _____ Par Value _____

	DATE		NO. OF SHARES	INFORMATION	CERTIFICATE NUMBERS	RECEIVED DR.		DELIVERED CR.		DR. BALANCE	

Form 32. (d) Detailed Accounting Forms of a Trust Department

Estate of _____ Asset — Investments (Bonds, Notes, etc.) C/D _____ National Bank, as _____

NAME OF SECURITY _____

Rate _____ % Interest Payable _____ Tax Status _____ Maturity _____ Special (_____)

	DATE	DENOMINATIONS (Par Value)	INFORMATION	NUMBERS	RECEIVED DR.	DELIVERED CR.	DR. BALANCE

NAME OF SECURITY _____

Rate _____ % Interest Payable _____ Tax Status _____ Maturity _____ Special (_____)

	DATE	DENOMINATIONS (Par Value)	INFORMATION	NUMBERS	RECEIVED DR.	DELIVERED CR.	DR. BALANCE

Form 32. (e) Detailed Accounting Forms of a Trust Department

Estate of _____ Asset — Accrued Receivables _____ National Bank, as _____

To Date of Death _____

	Date	INFORMATION	ASSET ACCRUED ON	Interest Dr.	Interest Cr.	Dividends, Rents Dr.	Dividends, Rents Cr.	Miscellaneous Dr.	Miscellaneous Cr.	BALANCE Dr.

Form 32. (f) Detailed Accounting Forms of a Trust Department

Asset—Real Estate & Mortgages

Estate of _____ _____ National Bank, as _____

		TAX BILLS EXAMINED		INTEREST PAYMENTS			INSURANCE			
	Amount, $	Year Amount Value	Year Amount Value	When Due	Amount	Day of Pay	No. of Policy	Company	Date of Expiration	Amount
	Interest rate %; Accrues from									
	Interest Payable									
	Mortgage date , Prin due									
	Extended to									
	Premises									
	Description									
	Location; Sec. Block Lot									
	Dimensions; Land Building									
	Date of Appraisal									
	Appraiser Land Building Total									
	$ $ $									
		MORTGAGE RECORDED	ASSIGNMENT RECORDED							
		State	State							
		County Date	County Date							
	Mortgagor	Sec. Liber Page	Sec. Liber Page							
	Address	Block No.	Block No.							
		ASSIGNMENT RECORDED State	State							
	Present Owner	County Date	County Date							
	Address	Sec. Liber Page	Sec. Liber Page							
		Block No.	Block No.							

Form 32. (g) Detailed Accounting Forms of a Trust Department

Estate of _____ Asset—Miscellaneous ____ National Bank, as _____

	Date		INFORMATION	Debit	Credit	Debit	Credit	Debit	Credit	DEBIT BALANCE

Form 32. (h) Detailed Accounting Forms of a Trust Department

Estate of _____ Asset—Cash ____ National Bank, as _____

	Date		INFORMATION	DEBIT Realization of Assets		DEBIT	Vouch. Register		CREDIT			Debit Balance
				Realty	Personalty	Acquired in Other Ways	Date Received	No.	Administration Expense	Debts	Legacies	

Form 32. (i) Detailed Accounting Forms of a Trust Department

_____ NATIONAL BANK, N.Y., as _____
With _____ as _____
Under Deed of Trust Dated _____
Under Trust Created Under will _____
Date of { Appointment by Surrogate Court of State of
Acceptance _____

Beneficiaries _____ Address _____

PERSONAL TRUST
NAME OF TRUST

Revocable / Irrevocable _____
Terminates _____
Disposition of Principal _____
Commission on Principal
Rate _____ When Payable _____

	Date	INFORMATION	Distributions Expenses Debit	Decrease Debit	Inventory Credit	Increase Credit	Principal Cr. Balance	

Form 32. (j) Detailed Accounting Forms of a Trust Department

_____ NATIONAL BANK, NEW YORK, AS _____
BENEFICIARY ADDRESS DISTRIBUTIVE SHARE

METHOD OF REMITTANCE _____

CASH
INCOME ACCOUNT

NAME OF { TRUST or ACCOUNT _____
COMMISSION _____
RATE DEDUCTIBLE

	Date	INFORMATION	Voucher Register Number	Voucher Register Date	DEBIT Beneficiaries	DEBIT Deductions	CREDIT	INCOME ANALYSIS Tax Free Bonds	INCOME ANALYSIS Non Taxable Income	INCOME ANALYSIS Dividends (Domestic)	INCOME ANALYSIS Non Tax Free Bonds	INCOME ANALYSIS Other Income	CREDIT BALANCE

Form 32. (k) Detailed Accounting Forms of a Trust Department

PERSONAL TRUST DEPARTMENT RECORD

——— NATIONAL BANK

Reported to Executive Committee — From whom received

Date of death — Place of death — Will dated — Letters granted

Legal Residence of Deceased — Will probated in — County; — State; Date

Ancillary Administration Necessary in

Inheritance, Estate and Transfer Taxes

Federal 60 days notice due — Filed — Tax and report due — Report filed — Tax paid

New York: Deposit for discount due — Deposit paid — Refund received

Other States

Paid

Advertising for Claims commenced — in — and — Time for filing claims expires

Income Tax

Personal return filed for previous year? — Tax paid?

Personal return prepared for current year to date of death — Date filed — Amount of tax — Date paid

Fiduciary return for current year filed

Fiduciary return for year of distribution of estate filed

ANALYSIS OF WILL

Article of Will	Legatee	Relation	Legacy	Paid

APPENDIX

APPENDIX A

CASES

§ 1

Rigney v. Chicago, 102 Ill. 77
Ayers v. Lawrence, 59 N. Y. 192

§ 2

Wynehamer v. People, 13 N. Y. 378

§ 3

Clarke v. Clarke, 178 U. S. 186
Green v. Armstrong, 1 Denio (N. Y.) 550

§ 4

Bruckman's Estate, 195 Pa. St. 363
Barrett v. Choen, 119 Ind. 56

§ 5

People v. Williams, 24 Mich. 156
Baker v. State, 109 Ind. 58

§ 6

Winfree v. Bagley, 102 N. C. 515

§ 7

Johns v. Johns, 1 Ohio St. 350
In re Jones, 172 N. Y. 575

§ 8

Goodwin v. Goodwin, 33 Conn. 314
Atlantic S. D. Co. v. Laundry Co., 64 N. J. Eq. 140

§ 9

Carlton v. Carlton, 72 Me. 116
Winfree v. Bagley, 102 N. C. 515

§ 10

Clayton v. Drake, 17 Ohio St. 367
U. S. v. Perkins, 163 U. S. 625
Minst v. Winthrop, 162 Mass. 119

§ 11

Den v. Mugway, 15 N. J. L. 331

§ 12

Clayton v. Drake, 17 Ohio St. 367

§ 13

Thorman v. Frame, 176 U. S. 350

§ 14

In re McLaughlin, 103 Cal. 429
In re Pingree, 100 Cal. 78

§ 15

Todhunter v. Stewart, 39 Ohio St. 181

§ 16

Converse v. Converse, 21 Vt. 168
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APPENDIX B

GLOSSARY

ABATE(MENT). To make less, destroy; a reduction of rent, interest, or an amount due; the reduction of a legacy when an estate is insufficient to pay all debts and legacies.

ABEYANCE. The condition of an estate when there is no one entitled to it at the present time.

ACCRUE. To grow to; to be added to, as the interest accrues on the principal.

ADJUDICATION. A decision or judgment.

AD LITEM. For the suit.

AFFINITY. Relationship acquired by marriage as distinguished from consanguinity. See Consanguinity.

ALIENATION. A transfer of the title to property by one person to another, by conveyance, as distinguished from inheritance; a devise of real property is regarded as alienation.

ANCILLARY. Letters testamentary or of administration for the purposes of additional administration, where there are assets or property in some other county, state, or country, granted usually to the executor or administrator who has been appointed in the place of the principal administrator.

ANIMO REVOCANDI. With intent to revoke.

ANNUITY. A periodical payment of money, amounting to a fixed sum in each year, the moneys paid being either a gift or in consideration of a gross sum received.

ANNUL. To do away with; to make null or void.

ANTICIPATION. Doing a thing before its proper time, e.g., dealing with or distributing property, income, etc., before the time fixed by deed or will conveying the same.

APPRAISEMENT. A valuation of property.

APPRAISER. One who makes a valuation on property.

ASSESS. To ascertain the value of a man's property for taxation.

ATTESTATION. The evidencing of any formal instrument by witnesses.

BENEFICIARY. A *cestui que trust*, one who has the profit, benefit, or advantage arising from a contract or a trust.

BEQUEATH. To give personal property by will, as distinguished from devise, which is to give real property by will.

BONA FIDE. In good faith; honestly.

CAPACITY. Legal ability to contract, to convey property, to sue and be sued, etc.

CAPITATION TAX. A tax paid by everyone in a community; a poll tax.

CAUSA MORTIS. In view of death; a gift made by one in view of death, and revocable before death any time.

CESTUI QUE TRUST. See Beneficiary.

CHATTELS. Articles of personal property; movable goods; movable assets; also (for most purposes) any interest in land other than an estate for life or of inheritance.

CHOSES IN ACTION. An intangible right enforceable by action; a right to recover a sum of money or a thing from another person in a court of justice.

CITATIONS. A summons to appear before the court issuing the citation in order to testify or give evidence in some particular case.

CLOSE CORPORATION. One whose entire stock is held by those active in its management or by members of one family; one whose stock is not on the market.

CODE. A collection or making uniform of a number of laws.

CODICIL. An addition or supplement to a will, executed with as great formality as the will itself.

COLLATERAL. Relationship by blood, not lineal.

COMMON LAW. English law as distinguished from foreign, civil, or canon law; that part of English law which does not depend on statutes.

COMPOS MENTIS. Sound of mind or capable of doing acts.

CONSANGUINITY. Relationship by blood; the relationship or connection of persons descended from the same stock or common ancestor as distinguished from affinity. See Affinity.

CONTEMPT OF COURT. A disregard or wilful neglect of the order or authority of a court, such as refusing to appear when summoned by the court.

CONTINGENT. That which depends upon some happening or occurrence; doubtful, conditional.

CORPOREAL. A material thing.

CORPUS. The substance; the capital of a fund or estate as distinguished from the income.

COVERTURE. The condition of a married woman.

CUM TESTAMENTO ANNEXO. With the will annexed.

CURTESY. The husband's estate in the wife's property after her death.

DE BONIS NON. An administrator *de bonis non* is one who takes charge of any property not executed or settled by a previous administrator whose place he is taking.

DECREE. The order made by a court of equity.

DEMISE. A conveyance, either in fee or for life, or for years.

DEPRECIATION. The reducing of the value of an article or thing.

DESCENT. The hereditary devolution of real property either to a single heir at law or to the nearest relatives in the same degree, whether in a descending, ascending, or collateral line.

DEVISE. To give real property by will.

DISTRIBUTION. The proportionment of disposition of the personal estate of an intestate.

DONEE. One who receives a gift.

DONOR. One who gives a gift.

DOWER. The right of a wife after her husband's death in one-third of all the lands owned by her husband during the married state.

EAR WITNESS. One who testifies as to what he himself heard.

ENTAIL. A fee limited to the issue, or certain classes of issue, instead of descending to all the heirs.

EQUITABLE CONVERSION. A change in the nature of property, by which, for certain purposes, real estate is considered as personal property and vice versa, and transmissible and descendible as such.

EQUITABLE ESTATE. A right or beneficial interest in land, the legal title to which is in another, and which can be enforced only in a court of equity.

EXECUTOR. One appointed by a testator in his will, to take charge of the settlement of his estate at the testator's death.

EXECUTION. The signing, sealing, acknowledging, and delivering with proper formalities, and in the presence of a proper number of witnesses, or officer, of a deed, will, or other instrument.

EYE WITNESS One giving evidence as to something which he himself has seen.

FEE. An estate of inheritance divided into three kinds: (1) fee simple, an absolute estate of inheritance; (2) qualified or limited estates; and (3) fee tail, an inherited estate limited to one person and the heirs of his body.

FIDUCIARY. One who holds property in trust for another.

GOOD-WILL. The benefit acquired by a business beyond the value of its net tangible assets, in consequence of its having a body of regular customers and a general reputation.

GUARDIAN. One chosen or appointed to take charge of the estate and education of an orphan, ward, or minor.

HEARSAY EVIDENCE. The evidence of a witness which he obtained from another, in contradistinction to ear and eye witnesses.

HEIR. One who succeeds by descent to an estate in land or would have succeeded had his ancestor died intestate.

HEREDITAMENTS. Every sort of inheritable property, such as corporeal, incorporeal, personal, and mixed.

HOLOGRAPHIC. A deed or will written entirely in the handwriting of the person making the deed or will.

IMMATERIAL EVIDENCE. Evidence which does not apply to the point at issue.

INALIENABLE. That which cannot be transferred.

INCOME. The gain which proceeds from property, labor, or business; it is applied particularly to individuals.

INCORPOREAL. That which is not material; intangible; unable to be handled, seen, or heard; invisible.

INQUEST. An investigation by the coroner as to the cause of the death of a person.

INTERPOLATE. To put in words in a completed or executed document.

JOINT TENANCY. The owning by two or more persons of a piece of property; upon the death of one the share owned by him passes to the survivor.

JOINT WILL. One will executed by two persons, which is probated twice.

JURISDICTION. The power of a court to decide any action or matter; the district over which the power of a court extends.

KIN OR KINDRED. Persons who are related by blood.

LEGACY. A gift of personal property made by will.

LEGATEE. One who has a legacy left to him; the beneficiary of a gift.

LIFE TENANT. One who has the right to certain property during his lifetime, or during the lifetime of another.

LINEAL DESCENDANTS. In a direct line from a common ancestor.

LIS PENDENS. A suit or action that is pending.

LITIGANT. A person engaged in a lawsuit.

MANDATE. A judicial command; a charge or commission; a bailment of goods without reward (mandatum).

MANDATORY. Directory.

MUTUAL TESTAMENT. Wills made by two persons, each leaving his property to the other if that other survives.

NEXT OF KIN. Those related by blood who would take personal estate of one who dies intestate.

NON COMPOS MENTIS. Not of sound mind.

NUGATORY. That which has no force or authority.

NUNCUPATIVE. Made by word of mouth to someone else and afterwards written out.

OLEOGRAPHIC. See Holographic.

PENDENTE LITE. While the suit is pending.

PERPETUITY. The tying up or disposing of an estate so that it never becomes at the absolute disposal of any person or number of persons. This is against public policy and so the "rule against perpetuities" was generally adopted.

PER STIRPES. By families, thus: In a gift to A and the children of B, if they are to take *per capita*, each child will have a share equal to that of A, but if they are to take *per stirpes* A will take one-half and the other one-half will be divided among the children of B.

POLL TAX. See Capitation Tax.

POSTHUMOUS CHILD. One born after the death of the father.

PROBATE. The proceeding by which a person's will or testament is established as such.

RENUNCIATION. A giving up, or declining; applying more particularly to an executor or administrator who declines or refuses to take such office.

RESIDUARY. Pertaining to the residue of an estate after settlement.

REVERSIONARY INTEREST. That which is to be enjoyed at a future time, after the determination of an intermediate estate.

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